



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Preliminary

32 Meaning of electronic communications networks and services

- (1) In this Act “electronic communications network” means—
- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
 - (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
 - (i) apparatus comprised in the system;
 - (ii) apparatus used for the switching or routing of the signals; and
 - (iii) software and stored data.
- (2) In this Act “electronic communications service” means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.
- (3) In this Act “associated facility” means a facility which—
- (a) is available for use in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility available); and
 - (b) is so available for the purpose of—
 - (i) making the provision of that network or service possible;

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- (ii) making possible the provision of other services provided by means of that network or service; or
 - (iii) supporting the provision of such other services.
- (4) In this Act—
- (a) references to the provision of an electronic communications network include references to its establishment, maintenance or operation;
 - (b) references, where one or more persons are employed or engaged to provide the network or service under the direction or control of another person, to the person by whom an electronic communications network or electronic communications service is provided are confined to references to that other person; and
 - (c) references, where one or more persons are employed or engaged to make facilities available under the direction or control of another person, to the person by whom any associated facilities are made available are confined to references to that other person.
- (5) Paragraphs (a) and (b) of subsection (4) apply in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.
- (6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.
- (7) In subsection (2) “a content service” means so much of any service as consists in one or both of the following—
- (a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;
 - (b) the exercise of editorial control over the contents of signals conveyed by means of a such a network.
- (8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.
- (9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they—
- (a) have been installed or stored in order to be used for that purpose; and
 - (b) are available to be so used.
- (10) In this section “signal” includes—
- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
 - (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

Notification by providers

33 Advance notification to OFCOM

- (1) A person shall not—

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- (a) provide a designated electronic communications network,
 - (b) provide a designated electronic communications service, or
 - (c) make available a designated associated facility,unless, before beginning to provide it or to make it available, he has given a notification to OFCOM of his intention to provide that network or service, or to make that facility available.
- (2) An electronic communications network, electronic communications service or associated facility is designated for the purposes of this section if it is of a description of networks, services or facilities that is for the time being designated by OFCOM as a description of networks, services or facilities for which notification under this section is required.
- (3) A person who has given a notification for the purposes of subsection (1) must, before—
 - (a) providing or making available the notified network, service or facility with any significant differences, or
 - (b) ceasing to provide it or to make it available,give a notification to OFCOM of the differences or (as the case may be) of his intention to cease to provide the network or service or to make the facility available.
- (4) A notification for the purposes of this section must—
 - (a) be sent to OFCOM in such manner as OFCOM may require; and
 - (b) contain all such information as OFCOM may require.
- (5) The only information OFCOM may require a notification to contain is—
 - (a) a declaration of the relevant proposal of the person giving the notification;
 - (b) the time when it is intended that effect should be given to the relevant proposal;
 - (c) particulars identifying the person giving the notification;
 - (d) particulars identifying one or more persons with addresses in the United Kingdom who, for the purposes of matters relating to the notified network, service or facility, are authorised to accept service at an address in the United Kingdom on behalf of the person giving the notification;
 - (e) particulars identifying one or more persons who may be contacted if there is an emergency that is caused by or affects the provision of the notified network, service or facility;
 - (f) addresses and other particulars necessary for effecting service on or contacting each of the persons mentioned in paragraphs (c) to (e).
- (6) The declaration of the relevant proposal that may be required under subsection (5) is whichever of the following is appropriate in the case of the person giving the notification—
 - (a) a declaration of his proposal to provide the network or service described in the notification or to make available the facility so described;
 - (b) a declaration of his proposal to make the modifications that are so described of the network, service or facility specified in the notification; or
 - (c) a declaration of his proposal to cease to provide the network or service so specified or to cease to make available the facility so specified.
- (7) Requirements imposed under subsection (4) are not to require a notification by a person to contain particulars falling within subsection (5)(d) in a case in which—

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- (a) that person is resident in a member State or has a place of business in a member State;
 - (b) the notification contains a statement under subsection (8);
 - (c) the notification sets out an address in a member State at which service will be accepted by the person who, in accordance with that statement, is authorised to accept it; and
 - (d) OFCOM are satisfied that adequate arrangements exist for effecting service on that person at that address.
- (8) That statement is one which—
- (a) declares that the person authorised, for the purposes of matters relating to the notified network, service or facilities, to accept service on behalf of the person giving the notification is that person himself; or
 - (b) identifies another person who is resident in a member State, or has a place of business in such State, as the person so authorised.
- (9) The reference in subsection (3) to providing or making available a notified network, service or facility with significant differences is a reference to continuing to provide it, or to make it available, after a change in whatever falling within subsection (5)(a) to (f) was last notified to OFCOM under this section.
- (10) References in this section to accepting service at an address are references—
- (a) to accepting service of documents or process at that address; or
 - (b) otherwise to receiving notifications at that address;
- and the reference in subsection (7) to effecting service at an address is to be construed accordingly.
- (11) Where a description of electronic communications network, electronic communications service or associated facility is designated for the purposes of this section at a time when a network, service or facility of that description is already being provided or made available by a person—
- (a) that person's obligation under this section to give a notification before beginning to provide or make available that network, service or facility shall have effect as an obligation to give a notification within such period after the coming into force of the designation as may be specified in the notice in which the designation is contained; and
 - (b) that notification is to be one stating that that person is already providing the network or service, or making the facility available (rather than that it is his intention to do so).
- (12) Subsection (11) has effect subject to any transitional provision—
- (a) which is contained in the notification setting out the designation; and
 - (b) treats a person as having given the notification required by that subsection.

34 Designations and requirements for the purposes of s. 33

- (1) Before—
- (a) making or withdrawing a designation for the purposes of section 33, or
 - (b) imposing or modifying a requirement under subsection (4) of that section,
- OFCOM must consult such of the persons who, in their opinion, are likely to be affected by it as they think fit.

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- (2) Before making or withdrawing a designation for the purposes of section 33 OFCOM must also consult the Secretary of State.
- (3) The way in which a designation for the purposes of section 33 or a requirement under subsection (4) of that section—
 - (a) is to be made or imposed, or
 - (b) may be withdrawn or modified,is by a notice published in such manner as OFCOM consider appropriate for bringing the designation, requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) A designation for the purposes of section 33 may be framed by reference to any such description of networks, services or facilities, or such other factors, as OFCOM think fit.
- (5) Requirements imposed under section 33(4) may make different provision for different cases.

35 Notification of contraventions of s. 33

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person has contravened section 33, they may give him a notification under this section.
- (2) A notification under this section is one which—
 - (a) sets out the determination made by OFCOM; and
 - (b) 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 determination; and
 - (b) providing OFCOM with the information which the notified person should have provided for the purposes of section 33 but has not.
- (4) Subject to subsections (5) to (7), 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.
- (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 of section 33; and

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- (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 section 33, OFCOM may give a further notification in respect of the same contravention if, and only if—
- (a) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after a period to which the earlier notification relates; or
 - (b) the earlier notification has been withdrawn without a penalty having been imposed by reference to the notified contravention.
- (10) 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 section 33; 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 36(2) or 37(2) that the contravention to which the previous notification related did occur.

36 Enforcement notification for contravention of s. 33

- (1) This section applies where—
- (a) a person (“the notified provider”) has been given a notification under section 35;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the notified determination; 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 section 33; and
 - (b) that he has not, during the period allowed under section 35, provided OFCOM with all the information which he should have provided to them to remedy the contravention.
- (3) An enforcement notification is a notification which imposes a requirement on the notified provider to take all such steps for providing OFCOM with that information as may be specified in the notification.
- (4) A decision of OFCOM to give an enforcement notification to a person—
- (a) must be notified to that person, together with the reasons for the decision, no later than a 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;

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- (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.

37 Penalties for contravention of s. 33

- (1) This section applies (in addition to section 36) where—
 - (a) a person (“the notified provider”) has been given a notification under section 35;
 - (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 section 33; and
 - (b) has not, during the period allowed under section 35, provided OFCOM with all the information which he should have provided to remedy the contravention.
- (3) Where a notification under section 35 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 36 in respect of the notified contravention.
- (6) The amount of a penalty imposed under this section is to be such amount not exceeding £10,000 as OFCOM determine to be—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (7) In making that determination OFCOM must have regard to—
 - (a) any representations made to them by the notified provider; and
 - (b) any steps taken by him towards complying with his obligations under section 33.
- (8) 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.
- (9) 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.

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- (10) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (6).
- (11) No order is to be made containing provision authorised by subsection (10) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Administrative charges imposed on providers

38 Fixing of charges

- (1) A person who, at any time in a charging year, is a person to whom this section applies shall—
- (a) in respect of the network, service or facility provided or made available by him,
 - (b) in respect of the application to him of a universal service condition relating to matters mentioned in section 66(3),
 - (c) in respect of the application to him of an SMP apparatus condition, or
 - (d) in respect of the application of the electronic communications code in his case,
- pay to OFCOM the administrative charge (if any) that is fixed by them for the case that is applicable to him.
- (2) This section applies to a person at a time if, at that time, he is—
- (a) providing an electronic communications network of a description which is, at that time, designated for the purposes of this section;
 - (b) providing an electronic communications service of a description which is, at that time, so designated;
 - (c) making available an associated facility of a description which is, at that time, so designated;
 - (d) a person who without being a communications provider is designated in accordance with regulations under section 66;
 - (e) a supplier of apparatus to whom an SMP apparatus condition applies; or
 - (f) a person in whose case the electronic communications code applies by virtue of a direction given under section 106 otherwise than for the purposes of the provision by him of an electronic communications network of a designated description.
- (3) OFCOM are not to fix the administrative charge for a charging year unless—
- (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that OFCOM are proposing to apply in fixing charges under this section for that year; and
 - (b) the charge is fixed in accordance with those charging principles.
- (4) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make—
- (a) that, on a year by year basis, the aggregate amount of the charges payable to OFCOM are sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out the functions mentioned in subsection (5);

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- (b) that the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed;
 - (c) that the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent;
 - (d) that the charges fixed for persons who are liable to charges by reason only of being persons to whom SMP apparatus conditions apply are referable only to things done in, or in connection with, the setting, modification or enforcement of SMP apparatus conditions or the carrying out of the functions mentioned in subsection (6)(l); and
 - (e) that the charges fixed for persons who are liable to charges by reason only of being persons falling within subsection (2)(f), are referable only to costs incurred in, or in connection with, the carrying out of the functions mentioned in subsection (6)(g) and (l).
- (5) Those functions are—
- (a) the relevant Chapter 1 functions;
 - (b) the carrying out for a Chapter 1 purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(1)(c) to (f);
 - (c) the publication under section 26 of any information or advice that it appears to OFCOM to be appropriate to make available to the persons mentioned in subsection (2)(a) to (c) of that section; and
 - (d) the function of taking any steps that OFCOM consider it necessary to take—
 - (i) in preparation for the carrying out of any of the functions mentioned in paragraphs (a) to (c) of this subsection; or
 - (ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.
- (6) The relevant Chapter 1 functions are—
- (a) OFCOM's functions under sections 33 to 37 and 44;
 - (b) the setting, modification and enforcement of conditions under section 45;
 - (c) the supervision, as respects the requirements of sections 33 to 37 and of any such conditions, of communications providers and of persons who make associated facilities available;
 - (d) the monitoring of compliance with those requirements and with any such conditions;
 - (e) the functions conferred on OFCOM by or under section 55;
 - (f) their functions under section 105;
 - (g) their functions under sections 106 to 119;
 - (h) their functions under sections 185 to 191;
 - (i) securing international co-operation in relation to the regulation of electronic communications networks, electronic communications services and associated facilities;
 - (j) securing the harmonisation and standardisation of the regulation of electronic communications networks, electronic communications services and associated facilities;
 - (k) market analysis and any monitoring of the controls operating in the markets for electronic communications networks, electronic communications services and associated facilities;
 - (l) OFCOM's functions under this section and sections 39 to 43.

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- (7) A purpose is a Chapter 1 purpose for the purposes of subsection (5)(b) if it is the purpose of ascertaining the effectiveness of one or more of the following—
- (a) the regulation of the provision of electronic communications networks or electronic communications services;
 - (b) the regulation of the making available of associated facilities;
 - (c) the mechanisms in place for the handling, by communications providers and by persons making such facilities available, of complaints made to them by consumers in markets for such services or facilities;
 - (d) the mechanisms in place for resolving disputes between such consumers and communications providers or persons who make such facilities available.
- (8) OFCOM’s power to fix charges for a particular case includes—
- (a) power to provide that the charges in that case are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them;
 - (b) power to provide for different charges to be imposed in that case on different descriptions of persons; and
 - (c) power to provide for particular descriptions of persons falling within subsection (2)(d) to (f) to be excluded from the liability to pay charges in that case.
- (9) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement setting out, in respect of that year—
- (a) the aggregate amounts of the administrative charges for that year that have been received by OFCOM;
 - (b) the aggregate amount of the administrative charges for that year that remain outstanding and are likely to be paid or recovered; and
 - (c) the cost to OFCOM of carrying out the functions mentioned in subsection (5).
- (10) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (9) shall be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (4)(a) in relation to the following year.
- (11) Section 34 applies in relation to the making and withdrawal of a designation for the purposes of this section as it applies to the making and withdrawal of a designation for the purposes of section 33.
- (12) In this section “charging year” means—
- (a) the period beginning with the commencement of this section and ending with the next 31st March; or
 - (b) any subsequent period of twelve months beginning with 1st April.

39 Supplemental provision about fixing charges

- (1) OFCOM’s power to fix a charge under section 38—
- (a) is to be exercisable only by the publication or giving of such notification as they consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it; and
 - (b) includes power, by setting it out in that notification, to fix the time at which the charge is to become due to OFCOM.

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- (2) A charge fixed under section 38 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which—
 - (a) the network, service or facility in respect of which it is fixed is not provided or made available by the person otherwise liable to the charge;
 - (b) the universal service condition in respect of which it is fixed does not apply in that person's case;
 - (c) the SMP apparatus condition in respect of which it is fixed does not apply in that person's case; or
 - (d) the electronic communications code does not apply in that person's case.
- (3) Such a charge may also be fixed (subject to subsection (4)) so that it is referable, in whole or in part—
 - (a) to the provision or making available of a network, service or facility during a part of the year falling before the fixing of the charge;
 - (b) to the application of a universal service condition to a person for a part of the year so falling;
 - (c) to a person's being a person to whom an SMP apparatus condition applies for a part of the year so falling; or
 - (d) to the application of the electronic communications code in a person's case during a part of the year so falling.
- (4) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—
 - (a) the imposition of the charge, and
 - (b) the amount of the charge,are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.
- (5) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (6) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (7) References in this section to a statement of charging principles are references to a statement by OFCOM of the principles that they are proposing to apply in fixing charges under section 38 for a charging year.
- (8) In this section "charging year" has the same meaning as in section 38.

40 Notification of non-payment of charges

- (1) OFCOM are not entitled to bring proceedings for the recovery from a person of an administrative charge fixed for any year under section 38 unless they have given that person a notification under this section with respect to the amount they are seeking to recover.

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- (2) Where OFCOM determine that there are reasonable grounds for believing that a person is in contravention (whether in respect of the whole or a part of a charge) of a requirement to pay such an administrative charge, they may give him a notification under this section.
- (3) A notification under this section is one which—
 - (a) sets out the determination made by OFCOM; and
 - (b) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (4).
- (4) Those things are—
 - (a) making representations about the notified determination; and
 - (b) paying the unpaid charge or (as the case may be) the amount outstanding.
- (5) Subject to subsections (6) to (8), 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.
- (6) 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.
- (7) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (8) 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.
- (9) A notification under this section—
 - (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge; 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.
- (10) Where a notification under this section has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount if, and only if—
 - (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates; or
 - (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.
- (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 a requirement to pay an administrative charge; and

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- (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 41(2) that the contravention to which the previous notification related did occur.

41 Penalties for non-payment of charges

- (1) This section applies where—
 - (a) a person (“the notified charge payer”) has been given a notification under section 40;
 - (b) OFCOM have allowed the notified charge payer an opportunity of making representations about the notified determination; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified charge payer if he—
 - (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under section 38; and
 - (b) has not, during the period allowed under section 40, paid the whole of the notified amount outstanding.
- (3) Where a notification under section 40 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) The amount of a penalty imposed under this section is to be such amount, not exceeding twice the amount of the charge fixed for the relevant year, as OFCOM determine to be—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) In making that determination OFCOM must have regard to—
 - (a) any representations made to them by the notified charge payer; and
 - (b) any steps taken by him towards paying the amounts that he was notified under section 40 were outstanding.
- (7) 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.
- (8) 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.
- (9) In this section “the relevant year”, in relation to a contravention of a requirement to pay the whole or a part of the administrative charge fixed for any year, means that year.
- (10) The provisions of this section do not affect OFCOM’s power, apart from those provisions, to bring proceedings (whether before or after the imposition of a penalty

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under this section) for the recovery of the whole or part of an amount due to them under section 38(1).

42 Suspending service provision for non-payment

- (1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available (“the contravening provider”) if they are satisfied—
 - (a) that he is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);
 - (b) that the contraventions are not contraventions relating only to charges in respect of the application to the contravening provider of SMP apparatus conditions;
 - (c) that the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;
 - (d) that an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and
 - (e) 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
 - (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) OFCOM are not to give a direction under this section unless they have—

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- (a) notified the contravening provider of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;
 - (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 to take advantage of that opportunity.
- (7) That period must be one ending not less than one month after the day of the giving of the notification.
- (8) If OFCOM consider it appropriate to do so (whether or not in consequence of any 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.
- (9) For the purposes of this section there are repeated contraventions by a person of requirements to pay administrative charges to the extent that—
- (a) in the case of a previous notification given to that person under section 40, OFCOM have determined for the purposes of section 41(2) that such a contravention did occur; and
 - (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 the same or different failures to pay administrative charges.

43 Enforcement of directions under s. 42

- (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 42; or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person guilty of an offence under subsection (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under section 42 shall be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Where a duty is owed by virtue of subsection (3) 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.

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- (5) In proceedings brought against a person by virtue of subsection (4)(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 in question.
- (6) Sections 94 to 99 apply in relation to a contravention of conditions imposed by a direction under section 42 as they apply in relation to a contravention of conditions set under section 45.

Register of providers required to notify or to pay charges

44 Duty of OFCOM to keep publicly accessible register

- (1) It shall be the duty of OFCOM to establish and maintain a register for the purposes of section 33.
- (2) OFCOM must record in the register—
 - (a) every designation by them for the purposes of section 33 or 38;
 - (b) every withdrawal by them of such a designation;
 - (c) every notification given to them under section 33; and
 - (d) every notification treated as given to them under that section by a transitional provision made under subsection (12) of that section.
- (3) Information recorded in the register must be so recorded in such manner as OFCOM consider appropriate.
- (4) It shall be the duty of OFCOM to publish a notification setting out—
 - (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (5) The publication of a notification under subsection (4) must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) OFCOM must make the register available for public inspection—
 - (a) during such hours, and
 - (b) on payment of such fees,
 as are set out in the notification for the time being in force under subsection (4).

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;

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- (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.
- (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 92; 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 89.
- (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.

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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.
- (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; 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 89.
- (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”).

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;
 - (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.

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.
- (2) Before setting conditions under section 45, or modifying or revoking a condition so set, 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.
- (3) That period must end no less than one month after the day of the publication of the notification.
- (4) In the case of a notification under subsection (2) with respect to an SMP condition, the applicable requirements of sections 79 to 86 must also be complied with.
- (5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification under subsection (2) only if—
 - (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
 - (b) they have had 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.

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- (6) The publication of a notification under this section 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.

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 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) A 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;
 - (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.
- (3) In giving, modifying or withdrawing the direction, approval or consent, a person other than OFCOM shall be under the same duty as OFCOM to act in accordance with the six Community requirements set out in section 4.
- (4) Before the direction, approval or consent is given, modified or withdrawn, a notification must be published—
 - (a) stating that there is a proposal to give, modify or withdraw it;
 - (b) identifying the person whose proposal it is;
 - (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 person whose proposal it is.
- (5) That period must be one ending not less than one month after the day of the publication of the notification.
- (6) But, where—
 - (a) the person giving the notification is satisfied that there are exceptional circumstances justifying the use of a shorter period, and

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- (b) the notification is not one that is required to be sent to the European Commission under section 50(4) or (5),
the period specified as the period for making representations may be whatever shorter period that person considers reasonable in those circumstances.
- (7) In a case in which—
- (a) a person other than OFCOM are proposing to give, modify or withdraw a direction, approval or consent, and
- (b) the condition for the purposes of which the direction, approval or consent has effect, or will have effect, provides for notifications of proposals for the purposes of that condition to be given by that person,
the obligation of publishing the notification for the purposes of subsection (4) of that proposal falls on that person.
- (8) In any other case, the obligation of publishing a notification for the purposes of subsection (4) falls on OFCOM.
- (9) The person who is authorised to give the direction, approval or consent may give effect, with or without modifications, to a proposal with respect to which a notification has been given under subsection (4) only if—
- (a) he has considered every representation about the proposal that is made to him within the period specified in the notification; and
- (b) he has had 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.
- (10) The publication of a notification under this section must be in such manner as appears to the person publishing it to be appropriate for bringing the contents of the notification to the attention of such persons as he considers appropriate.

50 Delivery of copies of notifications etc.

- (1) The relevant person must send to the Secretary of State—
- (a) a copy of every notification published under section 48(1) or (2);
- (b) a copy of every notification published under section 49(4);
- (c) a copy of every direction, approval or consent given for the purpose of giving effect to a proposal required to be published under section 49(4); and
- (d) a copy of every instrument modifying or withdrawing a direction, approval or consent for the purpose of giving effect to such a proposal.
- (2) The relevant person must send to the European Commission—
- (a) a copy of every notification published under section 48(1) with respect to an SMP services condition;
- (b) a copy of every direction, approval or consent given for the purposes of such a condition; and
- (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.
- (3) OFCOM must send to the European Commission and to the regulatory authorities of every other member State a copy of every notification published by them under section 48(2) with respect to a proposal which—

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- (a) relates to the setting, modification or revocation of an access-related condition falling within section 73(2) or (4) or of an SMP services condition; and
 - (b) is a proposal which, in OFCOM's opinion, would affect trade between member States.
- (4) OFCOM must send to the European Commission and to the regulatory authorities of every other member State a copy of every notification published by them under section 49(4) with respect to a proposal which—
 - (a) relates to the giving of a direction, approval or consent for the purposes of—
 - (i) an access-related condition falling within section 73(2) or (4), or
 - (ii) an SMP services condition,or to the modification or withdrawal of such a direction, approval or consent; and
 - (b) is a proposal which, in OFCOM's opinion, would affect trade between member States.
- (5) Where it is a person other than OFCOM who is the relevant person who is required to publish a notification under section 49(4) relating to the giving, modification or withdrawal of a direction, approval or consent given for purposes mentioned in subsection (4)(a) of this section—
 - (a) that person must refer to OFCOM the question whether, in their opinion, the proposal would affect trade between member States;
 - (b) OFCOM must immediately determine that question on that reference; and
 - (c) the relevant person must send a copy of the notification to the European Commission and to the regulatory authorities of every other member State if OFCOM determine that the proposal is one which, in their opinion, would affect trade between member States.
- (6) The relevant person must, in every other case in which it appears to him appropriate to do so, send a copy of—
 - (a) every notification published under section 48(1) or (2) or 49(4),
 - (b) every direction, approval or consent given for the purposes of a condition set under section 45, and
 - (c) every instrument modifying or withdrawing such a direction, approval or consent,to the European Commission and to such of the regulatory authorities of the other member States as the relevant person thinks fit.
- (7) Subsection (6) does not apply where—
 - (a) the notification or the notified proposal relates to an SMP apparatus condition, or to a direction, approval or consent for the purposes of such a condition; or
 - (b) the direction, approval or consent given, modified or withdrawn is for the purposes of such a condition.
- (8) In this section “the relevant person”, in relation to a notification, direction, approval or consent—
 - (a) except in a case falling within paragraph (b), means the person by whom it is published or (as the case may be) the person by whom it has been or is to be given, modified or withdrawn; and

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- (b) in the case of a direction, approval or consent given, modified or withdrawn by a person other than OFCOM for the purpose of giving effect to a proposal published by OFCOM under section 49(4), means OFCOM.

General conditions: subject-matter

51 Matters to which general conditions may relate

- (1) Subject to sections 52 to 64, the only conditions that may be set under section 45 as general conditions are conditions falling within one or more of the following paragraphs—
 - (a) conditions making such provision as OFCOM consider appropriate for protecting the interests of the end-users of public electronic communications services;
 - (b) conditions making such provision as OFCOM consider appropriate for securing service interoperability and for securing, or otherwise relating to, network access;
 - (c) conditions making such provision as OFCOM consider appropriate for securing the proper and effective functioning of public electronic communications networks;
 - (d) conditions for giving effect to determinations or regulations made under section 71;
 - (e) conditions requiring or regulating the provision, availability and use, in the event of a disaster, of electronic communications networks, electronic communications services and associated facilities;
 - (f) conditions making such provision as OFCOM consider appropriate for securing the protection of public health by the prevention or avoidance of the exposure of individuals to electro-magnetic fields created in connection with the operation of electronic communications networks;
 - (g) conditions requiring compliance with relevant international standards.
- (2) The power under subsection (1)(a) to set conditions for protecting the interests of the end-users of public electronic communications services includes power to set conditions for that purpose which—
 - (a) relate to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services; and
 - (b) give effect to Community obligations to provide protection for such end-users in relation to the supply, provision or making available of those goods, services or facilities.
- (3) The power to set general conditions in relation to a description of electronic communications network or electronic communications service does not include power—
 - (a) to set conditions that are made applicable according to the identity of the provider of a network or service; or
 - (b) to set conditions that differ according to the identity of the provider of the networks or services to which they relate.
- (4) The power to set general conditions falling within subsection (1)(b) does not include power to set conditions containing provision which under—

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- (a) section 73, or
 - (b) any of sections 87 to 92,
- must be or may be included, in a case in which it appears to OFCOM to be appropriate to do so, in an access-related condition or SMP condition.
- (5) The conditions falling within subsection (1)(c) include conditions making such provision as OFCOM consider appropriate for the purpose, in accordance with Community obligations, of preventing or restricting electro-magnetic interference—
- (a) with the provision of an electronic communications network or electronic communications service; or
 - (b) with, or with the receipt of, anything conveyed or provided by means of such a network or service.
- (6) In this section “electro-magnetic interference” means interference by means of the emission or reflection of electro-magnetic energy in the course of, or in connection with, the provision any electronic communications network or electronic communications service.
- (7) In this section “disaster” includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials.

General conditions: customer interests

52 Conditions relating to customer interests

- (1) It shall be the duty of OFCOM to set such general conditions (if any) as they consider appropriate for securing that—
- (a) public communications providers, or
 - (b) such descriptions of them as OFCOM consider appropriate,
- establish and maintain procedures, standards and policies with respect to the matters mentioned in subsection (2).
- (2) Those matters are—
- (a) the handling of complaints made to public communications providers by any of their domestic and small business customers;
 - (b) the resolution of disputes between such providers and any of their domestic and small business customers;
 - (c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;
 - (d) the information about service standards and about the rights of domestic and small business customers that is to be made available to those customers by public communications providers;
 - (e) any other matter appearing to OFCOM to be necessary for securing effective protection for the domestic and small business customers of such providers.
- (3) It shall be the duty of OFCOM, in setting conditions in accordance with subsection (1), to secure so far as they consider appropriate—
- (a) that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent and effective;

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- (b) that domestic and small business customers have the right to use those procedures free of charge; and
 - (c) that where public communications providers are in contravention of conditions set in accordance with the preceding provisions of this section, the providers follow such procedures as may be required by the general conditions.
- (4) Subject to section 55, OFCOM’s duties under subsections (1) and (3) so far as relating to procedures for the handling of complaints are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers to establish and maintain procedures that conform with a code of practice which is—
- (a) applicable to the providers to whom the conditions apply; and
 - (b) for the time being approved by OFCOM for the purposes of this subsection.
- (5) Subject to section 55, OFCOM’s duties under subsections (1) and (3) so far as relating to procedures for resolving disputes are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers—
- (a) to establish and maintain procedures for resolving disputes; and
 - (b) to secure that those procedures are, and continue to be, approved by OFCOM.
- (6) In this section “domestic and small business customer”, in relation to a public communications provider, means a customer of that provider who is neither—
- (a) himself a communications provider; nor
 - (b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

53 Approval of codes of practice for the purposes of s. 52

- (1) Where a code of practice is submitted to OFCOM for approval, they shall approve that code if and only if, in their opinion, it makes all such provision as they consider necessary in relation to the matters dealt with in the code for the protection of the domestic and small business customers of the public communications providers to whom the code applies.
- (2) It shall be the duty of OFCOM to keep under review the codes of practice for the time being approved by them.
- (3) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—
- (a) approve modifications that have been made to an approved code;
 - (b) withdraw their approval from a code; or
 - (c) give notice that the withdrawal of their approval will take effect from such time as may be specified in the notification unless such modifications of the code as are specified in the notification are made before that time.
- (4) In considering—
- (a) whether to approve a code of practice, or
 - (b) whether or in what manner to exercise their powers under subsections (2) and (3) of this section,

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OFCOM must have regard to the matters mentioned in subsection (5).

- (5) Those matters are—
- (a) the need to secure that customers are able readily to comprehend the procedures that are provided for by an approved code of practice;
 - (b) the need to secure that there is consistency between the different codes for the time being approved by OFCOM; and
 - (c) the need to secure that the number of different codes so approved is kept to a minimum.
- (6) In this section—
- “approval” means approval for the purposes of section 52(4) and “approve” and “approved” are to be construed accordingly; and
- “domestic and small business customer” has the same meaning as in section 52.

54 Approval of dispute procedures for the purposes of s. 52

- (1) Before giving their approval to any dispute procedures, OFCOM must consult the Secretary of State.
- (2) OFCOM are not to approve dispute procedures unless they are satisfied that the arrangements under which the procedures have effect—
 - (a) are administered by person who is for practical purposes independent (so far as decisions in relation to disputes are concerned) of both OFCOM and the communications providers to whom the arrangements apply;
 - (b) give effect to procedures that are easy to use, transparent and effective;
 - (c) give, in the case of every communications provider to whom the arrangements apply, a right to each of his domestic and small business customers to use the procedures free of charge;
 - (d) ensure that all information necessary for giving effect to the procedures is obtained;
 - (e) ensure that disputes are effectively investigated;
 - (f) include provision conferring power to make awards of appropriate compensation; and
 - (g) are such as to enable awards of compensation to be properly enforced.
- (3) OFCOM may approve dispute procedures subject to such conditions (including conditions as to the provision of information to OFCOM) as they may think fit.
- (4) It shall be the duty of OFCOM to keep under review the dispute procedures for the time being approved by them.
- (5) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—
 - (a) modify the conditions of their approval of any dispute procedures or withdraw such an approval; or
 - (b) give notice that the modification of those conditions, or the withdrawal of such an approval, will take effect from such time as may be specified in the notification unless the procedures (or the arrangements under which they have effect) are modified before that time in the manner required by the notification.

- (6) In considering—
- (a) whether to approve dispute procedures, or
 - (b) whether or in what manner to exercise their powers under subsections (3) to (5),

OFCOM must have regard to the matters mentioned in subsection (7).

- (7) Those matters are—
- (a) the need to secure that customers are able readily to comprehend dispute procedures;
 - (b) the need to secure that there is consistency between the different procedures for the time being approved by OFCOM; and
 - (c) the need to secure that the number of different sets of procedures so approved is kept to a minimum.

- (8) In this section—

“approval” means approval for the purposes of subsection (5) of section 52 and “approve” and “approved” are to be construed accordingly;

“dispute procedures” means any such procedures as may fall to be approved for the purposes of that subsection; and

“domestic and small business customer” has the same meaning as in section 52.

55 Orders by OFCOM in the absence of conditions under s. 52

- (1) OFCOM may make an order under this section if, at any time, they consider in relation to any one or more public communications providers—
- (a) that it is not practicable, or at least not appropriate, for OFCOM’s duties under subsections (1) and (3) of section 52 to be performed in a particular respect by the setting of general conditions; and
 - (b) that it is necessary to make the order for the purpose—
 - (i) of securing the necessary protection for the customers of that provider or of those providers; or
 - (ii) of securing compliance with a Community obligation.
- (2) An order under this section may make such of the following provisions as OFCOM think fit—
- (a) provision imposing requirements with respect to the complaints and disputes mentioned in section 52(2);
 - (b) provision for the enforcement of those requirements;
 - (c) provision making other arrangements for the purposes of those requirements.
- (3) The power to make provision by an order under this section includes, in particular—
- (a) power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;
 - (b) power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person;
 - (c) power to confer jurisdiction with respect to any matter on OFCOM themselves;

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- (d) power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both;
 - (e) power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order; and
 - (f) power to make such other provision as OFCOM think fit for the enforcement of such awards and directions.
- (4) An order under this section may require such public communications providers as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with—
- (a) the establishment and maintenance, in accordance with such an order, of a body corporate or of a procedure; or
 - (b) the making of any other arrangements for the purposes of the requirements of such an order.
- (5) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.
- (6) Section 403 applies to the power of OFCOM to make an order under this section.
- (7) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

General conditions: telephone numbers

56 The National Telephone Numbering Plan

- (1) It shall be the duty of OFCOM to publish a document (to be known as “the National Telephone Numbering Plan”) setting out—
- (a) the numbers that they have determined to be available for allocation by them as telephone numbers;
 - (b) such restrictions as they consider appropriate on the adoption of numbers available for allocation in accordance with the plan; and
 - (c) such restrictions as they consider appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put.
- (2) It shall be OFCOM’s duty—
- (a) from time to time to review the National Telephone Numbering Plan; and
 - (b) to make any revision of that plan that they think fit in consequence of such a review;
- but this duty must be performed in compliance with the requirements, so far as applicable, of section 60.
- (3) OFCOM must also keep such day to day records as they consider appropriate of the telephone numbers allocated by them in accordance with the National Telephone Numbering Plan.
- (4) The publication of the National Telephone Numbering Plan, or of a revision of it, must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the Plan, or of the revised Plan, to the attention of such persons as OFCOM consider appropriate.

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- (5) In this Chapter references to a telephone number are (subject to subsection (7)) references to any number that is used (whether or not in connection with telephony) for any one or more of the following purposes—
- (a) identifying the destination for, or recipient of, an electronic communication;
 - (b) identifying the origin, or sender, of an electronic communication;
 - (c) identifying the route for an electronic communication;
 - (d) identifying the source from which an electronic communication or electronic communications service may be obtained or accessed;
 - (e) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
 - (f) identifying the communications provider by means of whose network or service an electronic communication is to be transmitted, or treated as transmitted.
- (6) In this Chapter references to the adoption of a telephone number by a communications provider are references to his doing any of the following in relation to a number allocated (whether or not to that provider) by OFCOM—
- (a) allocating or transferring that number to a particular customer or piece of apparatus;
 - (b) using that number for identifying a service or route used by that provider or by any of his customers;
 - (c) using that number for identifying a communication as one to be transmitted by that provider;
 - (d) designating that number for use in selecting a service or the required elements or characteristics of a service;
 - (e) authorising the use of that number by others for any of the purposes mentioned in subsection (5).
- (7) The Secretary of State may by order exclude such numbers as may be described in the order from the numbers that are to be treated as telephone numbers for the purposes of this Chapter.
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (9) References in this section to the allocation of a number are references to its allocation for the purposes of general conditions under section 58 or in accordance with conditions under section 59.
- (10) In this section—
- “electronic communication” means a communication for transmission by means of an electronic communications network; and
 - “number” includes data of any description.

57 Conditions to secure access to telephone numbers

- (1) General conditions may impose such requirements as OFCOM consider appropriate for securing that every end-user of a public electronic communications service is able, by means of that service—

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

- (a) to make calls or otherwise transmit electronic communications to every normal telephone number; and
 - (b) to receive every call or other electronic communication that is made or transmitted to him using such a service from apparatus identified by a normal telephone number.
- (2) A normal telephone number is one which—
- (a) has been made available, in accordance with the National Telephone Numbering Plan, as a number to be used for the purpose of identifying the destination for, or the recipient of, electronic communications; and
 - (b) is for the time being—
 - (i) a number adopted by a communications provider to be used for such a purpose; or
 - (ii) a number in use for such a purpose by a person other than a communications provider to whom it has been allocated in accordance with conditions under section 59.
- (3) In this section “electronic communication” has the same meaning as in section 56.

58 Conditions about allocation and adoption of numbers

- (1) General conditions may include conditions which—
- (a) prohibit the adoption of telephone numbers by a communications provider except in cases where the numbers have been allocated by OFCOM to a person;
 - (b) regulate the use by a communications provider, for the purpose of providing an electronic communications network or electronic communications service, of telephone numbers not allocated to that provider;
 - (c) impose restrictions on the adoption of telephone numbers by a communications provider, and on other practices by communications providers in relation to telephone numbers allocated to them;
 - (d) impose requirements on a communications provider in connection with the adoption by him of telephone numbers;
 - (e) require an allocation of particular telephone numbers to be transferred from one communications provider to another in the circumstances provided for in the conditions;
 - (f) impose such requirements and restrictions on a communications provider from whom an allocation is required to be transferred as may be provided for, in relation to the transfer, in the conditions;
 - (g) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of the allocation to him of telephone numbers;
 - (h) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of transfers of allocations from one person to another; and
 - (i) require communications providers to secure compliance with such rules relating to the use of telephone numbers by their customers as OFCOM may set out in general conditions or determine in accordance with provision made by the general conditions.
- (2) General conditions may also—

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- (a) provide for the procedure to be followed on the making of applications to OFCOM for the allocation of telephone numbers;
 - (b) provide for the information that must accompany such applications and for the handling of such applications;
 - (c) provide a procedure for telephone numbers to be reserved pending the making and disposal of an application for their allocation;
 - (d) provide for the procedure to be followed on the making of applications for telephone numbers to be reserved, and for the handling of such applications;
 - (e) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the adoption by a communications provider of telephone numbers allocated to that provider;
 - (f) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the transfer of an allocation from one person to another.
- (3) The conditions that may be set under subsection (1)(d) include conditions imposing requirements with respect to the provision of information for purposes connected with—
- (a) the compilation of directories; and
 - (b) the provision of directory enquiry facilities.
- (4) The procedure to be followed on the making of an application for the allocation of numbers that are available for allocation in accordance with the National Telephone Numbering Plan must require OFCOM's determination of the application to be made—
- (a) in the case of an application made in response to an invitation in accordance with subsection (5), before the end of six weeks after the day on which the application is received; and
 - (b) in any other case, before the end of three weeks after that day.
- (5) Where OFCOM are proposing to allocate any telephone numbers, they may—
- (a) invite persons to indicate the payments each would be willing to make to OFCOM if allocated the numbers; and
 - (b) make the allocation according to the amounts indicated.
- (6) General conditions providing for payments to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)—
- (a) must set out the principles according to which the amounts of the payments are to be determined;
 - (b) may provide for the payments to consist of a lump sum in respect of a particular allocation or transfer or of sums payable periodically while an allocation remains in force, or of both;
 - (c) may provide for the amounts to be determined by reference to—
 - (i) any indication according to which the allocation has been made as mentioned in subsection (5); or
 - (ii) any other factors (including the costs incurred by OFCOM in connection with the carrying out of their functions by virtue of section 56 and this section) as OFCOM think fit.
- (7) General conditions may—

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- (a) make modifications from time to time of, or of the method of determining, the amounts of periodic payments falling to be made by virtue of conditions containing provision authorised by this section; and
 - (b) make different provision in relation to different descriptions of communications provider and different descriptions of telephone number.
- (8) Nothing in subsection (7) authorises the modification, after it has been fixed, of the amount of a periodic payment fixed in accordance with arrangements made in relation to numbers allocated as mentioned in subsection (5)(b).
- (9) Payments that are required to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)—
- (a) must be paid to them as soon as they become due in accordance with the conditions imposing the obligation to pay; and
 - (b) if not so paid, are to be recoverable by them accordingly.

59 Telephone numbering conditions binding non-providers

- (1) OFCOM may set conditions under this section that apply to persons other than communications providers and relate to—
- (a) the allocation of telephone numbers to such persons;
 - (b) the transfer of allocations to and from such persons; and
 - (c) the use of telephone numbers by such persons.
- (2) The conditions that may be set under this section include conditions imposing obligations corresponding to any of the obligations that may be imposed on communications providers by general conditions making provision for, or in connection with—
- (a) the allocation of telephone numbers;
 - (b) the transfer of allocations; or
 - (c) the use of telephone numbers.
- (3) Subsection (10) of section 45 applies to OFCOM’s power to set a condition under this section as it applies to their power to set a condition under that section.
- (4) Sections 47 to 49 apply in relation to—
- (a) the setting of conditions under this section and the modification and revocation of such conditions; and
 - (b) the giving, modification or withdrawal of any direction, approval or consent for the purposes of a condition under this section,
- as they apply in the case of general conditions and in the case of directions, approvals and consents given for the purposes of general conditions.
- (5) It shall be the duty of a person who—
- (a) is not a communications provider, but
 - (b) applies for the allocation of a telephone number, or is allocated such a number,
- to comply with any conditions set under this section.
- (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

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(c) for any other appropriate remedy or relief.

(7) Subsection (6) does not apply in the case of a person against whom the obligations contained in the condition in question are enforceable (by virtue of his having become a communications provider) as obligations imposed by general conditions.

60 Modification of documents referred to in numbering conditions

(1) This section applies where numbering conditions for the time being have effect by reference to provisions, as they have effect from time to time, of—

- (a) the National Telephone Numbering Plan; or
- (b) another document published by OFCOM.

(2) OFCOM must not revise or otherwise modify the relevant provisions unless they are satisfied that the revision or modification is—

- (a) objectively justifiable in relation to the matters to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what the modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

(3) Before revising or otherwise modifying the relevant provisions, OFCOM must publish a notification—

- (a) stating that they are proposing to do so;
- (b) specifying the Plan or other document that they are proposing to revise or modify;
- (c) setting out the effect of their proposed revisions or modifications;
- (d) giving their reasons for making the proposal; and
- (e) specifying the period within which representations may be made to OFCOM about their proposal.

(4) That period must be one ending not less than one month after the day of the publication of the notification.

(5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification under subsection (3) only if—

- (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
- (b) they have had 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.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.

(7) In this section—

“numbering conditions” means—

- (a) general conditions the making of which is authorised by section 57 or 58;
- (b) conditions set under section 59;

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“the relevant provisions”, in relation to the Plan or document, means the provisions of the Plan or document by reference to which (as they have effect from time to time) the numbering conditions in question have effect.

61 Withdrawal of telephone number allocations

- (1) Where OFCOM have allocated telephone numbers for the purposes of any numbering conditions, they may withdraw that allocation if, and only if, the case is one in which the withdrawal of an allocation is authorised by this section.
- (2) The withdrawal of an allocation is authorised (subject to section 62) if—
 - (a) consent to the withdrawal is given by the person to whom the numbers are for the time being allocated;
 - (b) the withdrawal is made for the purposes of a transfer of the allocation required by numbering conditions;
 - (c) the withdrawal is made for the purposes of a numbering reorganisation applicable to a particular series of telephone numbers;
 - (d) the withdrawal is made in circumstances specified in the numbering conditions and for the purpose of securing that what appears to OFCOM to be the best and most efficient use is made of the numbers and other data that are appropriate for use as telephone numbers;
 - (e) the allocated numbers are numbers that have not been adopted during such period after their allocation as may be specified in the numbering conditions; or
 - (f) the allocated numbers are comprised in a series of numbers which have not to a significant extent been adopted or used during such period as may be so specified.
- (3) The withdrawal of an allocation is also authorised where—
 - (a) there have been serious and repeated contraventions, by the person to whom the allocation is for the time being allocated, of the numbering conditions; and
 - (b) it appears to OFCOM that the taking of other steps in respect of the contraventions is likely to prove ineffective for securing future compliance.
- (4) The withdrawal of an allocation is also authorised where—
 - (a) the person to whom the allocation is for the time being allocated is not a communications provider; and
 - (b) it appears to OFCOM that contraventions by that person of numbering conditions makes the withdrawal of the allocation appropriate.
- (5) OFCOM’s power to set conditions specifying circumstances for the purposes of subsection (2)(d), and their power to withdraw an allocation in the specified circumstances, are each exercisable only in a manner that does not discriminate unduly—
 - (a) against particular communications providers;
 - (b) against particular users of the allocated numbers; or
 - (c) against a particular description of such providers or users;and the purposes for which those powers may be exercised do not include the carrying out of a numbering reorganisation of the sort mentioned in subsection (2)(c).
- (6) Where OFCOM are proposing to withdraw an allocation in exercise of the power conferred by virtue of subsection (2)(e) or (f), they must—

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- (a) give a notification of their proposal;
 - (b) consider any representations made to them about the proposal within the period of one month following the day on which the notification is given; and
 - (c) ensure that the withdrawal (if OFCOM decide to proceed with it after considering those representations) does not take effect until the end of the three months beginning with the end of the period mentioned in paragraph (b).
- (7) A notification for the purposes of subsection (6) must be given in such manner as OFCOM consider appropriate for bringing it to the attention of—
- (a) the person to whom the numbers to which the proposed withdrawal relates are for the time being allocated;
 - (b) every person appearing to OFCOM to be a person to whom communications are or may be transmitted using one of those numbers for identifying the destination or route;
 - (c) every person who uses one or more of those numbers for obtaining access to services or for communication; and
 - (d) every other person who, in OFCOM’s opinion, is likely to be affected by the proposal.
- (8) For the purposes of this section there are repeated contraventions by a person of numbering 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 a contravention of a numbering condition did occur; and
 - (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 numbering conditions;
- and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different conditions.
- (9) In this section “numbering conditions” means—
- (a) general conditions the making of which is authorised by section 58; or
 - (b) conditions set under section 59.

62 Numbering reorganisations

- (1) This section applies to the withdrawal of an allocation for the purposes of a numbering reorganisation that is applicable to a particular series of telephone numbers.
- (2) The allocation is to be withdrawn only if the reorganisation, so far as it relates to numbers of any description, is not such as to discriminate unduly—
- (a) against particular communications providers;
 - (b) against particular users of the allocated numbers; or
 - (c) against a particular description of such providers or users.
- (3) The allocation must not be withdrawn if the reorganisation fails to provide for withdrawn allocations to be replaced by allocations of telephone numbers so nearly resembling the numbers to which the withdrawal relates as the purpose of the reorganisation allows.
- (4) Where a replacement allocation is made for the purposes of the re-organisation—

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- (a) no payment is to be made to OFCOM in respect of the making of the replacement allocation; but
 - (b) subsection (5) is to apply.
- (5) Where this subsection applies—
- (a) a provision for the making of periodic payments in respect of the withdrawn allocation is to be treated, to the extent that OFCOM determine that it should, as a provision requiring the making of periodic payments in respect of the replacement allocation; and
 - (b) OFCOM may, if they think fit, make such repayments or adjustments of a provision for payment as appear to them to be appropriate in consequence of differences between—
 - (i) the numbers to which the withdrawn allocation relates; and
 - (ii) the numbers to which the replacement allocation relates.

63 General duty as to telephone numbering functions

- (1) It shall be the duty of OFCOM, in the carrying out of their functions under sections 56 to 62—
 - (a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and
 - (b) to encourage efficiency and innovation for that purpose.
- (2) It shall also be the duty of OFCOM, in carrying out those functions, to secure that there is no undue discrimination by communications providers against other communications providers in relation to the adoption of telephone numbers for purposes connected with the use by one communications provider, or his customers, of an electronic communications network or electronic communications service provided by another.
- (3) In this section “number” has the same meaning as in section 56.

General conditions: must-carry obligations

64 Must-carry obligations

- (1) General conditions may include conditions making any provision that OFCOM consider appropriate for securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the conditions.
- (2) A general condition containing provision authorised by this section is not (subject to subsection (4)) to require a service to be broadcast or otherwise transmitted by means of an electronic communications network unless—
 - (a) the service is included in the list of must-carry services; and
 - (b) the effect of the requirement is confined to networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes.
- (3) That list is as follows—

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- (a) any service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;
 - (b) the Channel 3 services so far as provided in digital form;
 - (c) Channel 4 so far as provided in digital form;
 - (d) Channel 5 so far as provided in digital form;
 - (e) S4C Digital;
 - (f) the digital public teletext service.
- (4) General conditions making provision authorised by this section in relation to a listed service must, to such extent as OFCOM consider appropriate (and subject to subsection (5))—
 - (a) apply the requirement to broadcast or otherwise transmit that service to every service which is an ancillary service by reference to the listed service; and
 - (b) provide for the listed service to be treated for the purposes of the conditions as constituting such other services comprised in or provided with that service as may be determined by OFCOM.
- (5) General conditions making provision authorised by this section must also comply with all such restrictions (if any) as may be imposed by order made by the Secretary of State as to the maximum and minimum amounts, or proportions, of available capacity that are to be required by such conditions to be used in the case of a network for the broadcasting or other transmission of particular services, or descriptions of service.
- (6) In making an order under subsection (5) the Secretary of State must have regard to—
 - (a) the objective of securing that services included in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable; and
 - (b) the need to secure that the amount of capacity available in the case of every network for making other services available is reasonable and, accordingly, that the burden of complying with conditions set in accordance with this section is proportionate to the public benefit to be secured by that objective.
- (7) It shall be the duty of the Secretary of State from time to time to review—
 - (a) the list of must-carry services; and
 - (b) any requirements for the time being in force under this section with respect to the terms on which services must be broadcast or otherwise transmitted.
- (8) Where the Secretary of State carries out such a review, he must consult the following about the matters under review—
 - (a) OFCOM; and
 - (b) such persons who, in his opinion, are likely to be affected by a modification of the list of must-carry services, or who represent any of those persons, as he thinks fit.
- (9) If, on such a review, he considers it appropriate to do so, the Secretary of State may by order modify the list of must-carry services.
- (10) In determining whether it is appropriate for the purposes of subsection (9) to add a service to the list of must-carry services or to remove it, the Secretary of State must have regard, in particular, to—

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- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;
 - (b) the extent to which the service (if it were not included in the list) would nevertheless be made available to an acceptable technical standard by means of the networks to which conditions set in accordance with this section apply;
 - (c) the capacity left available, after the requirements of those conditions have been complied with, for the broadcasting or other transmission of material by means of each of those networks; and
 - (d) the need to secure that the burden of complying with conditions so set is proportionate to the objective of securing that the services in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable.
- (11) The Secretary of State may also, if (whether on such a review or in any other circumstances) he considers it appropriate to do so, by order make provision imposing requirements as to what, as between—
- (a) the person providing a must-carry service, and
 - (b) the person providing a network by means of which it is to be provided,
- are to be the terms on which the service is to be broadcast or otherwise transmitted, in pursuance of general conditions set in accordance with this section, by means of that network.
- (12) An order under subsection (11) may provide for the terms to be determined by OFCOM in accordance with the provisions of the order.
- (13) Before making an order under subsection (5), and before making an order under subsection (11) in a case in which there has been no review under subsection (7), the Secretary of State must consult—
- (a) OFCOM, and
 - (b) such persons who, in his opinion, are likely to be affected by the order, or who represent any of those persons, as he thinks fit.
- (14) Section 362 applies for construing this section as it applies for the purposes of Part 3.

Universal service conditions

65 Obligations to be secured by universal service conditions

- (1) The Secretary of State must by order (“the universal service order”) set out the extent to which the things falling within subsection (2) must, for the purpose of securing compliance with Community obligations for the time being in force, be provided, made available or supplied throughout the United Kingdom.
- (2) Those things are—
- (a) electronic communications networks and electronic communications services;
 - (b) facilities capable of being made available as part of or in connection with an electronic communications service;
 - (c) particular methods of billing for electronic communications services or of accepting payment for them;

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- (d) directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
 - (e) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (3) The universal service order may contain guidance about matters relating to the pricing of things that the order says must be provided, made available or supplied.
- (4) Before making or varying the universal service order, the Secretary of State must consult OFCOM and such other persons as he considers appropriate.

66 Designation of universal service providers

- (1) OFCOM may by regulations make provision for the designation of the persons to whom universal service conditions are to be applicable.
- (2) Subject to subsection (3), those regulations are not to authorise the designation of a person other than a communications provider.
- (3) The regulations may provide for a person other than a communications provider to be designated for the purposes only of conditions relating to—
- (a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
 - (b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (4) OFCOM may from time to time—
- (a) review the designations for the time being in force in accordance with regulations under this section; and
 - (b) on such a review, consider what (if any) universal service conditions should continue to apply to each of the designated persons.
- (5) The procedure to be followed in the case of every such review must be the procedure provided for in regulations made by OFCOM.
- (6) Regulations made by OFCOM under this section must provide for a person's designation as a person to whom universal service conditions are to be applicable to cease to have effect where, in any such case as may be described in the regulations, the universal service conditions applied to him are all revoked.
- (7) Regulations made by OFCOM under this section providing a procedure for the designation of persons, or for the conduct of a review under subsection (4), must not provide for any procedure other than one appearing to OFCOM—
- (a) to be efficient, objective and transparent; and
 - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- (8) Where—
- (a) OFCOM designate a person in accordance with regulations under this section, or
 - (b) a designation of a person in accordance with any such regulations ceases to have effect,

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they must give a notification of that designation, or of that fact, to the European Commission.

- (9) A notification under this section must identify the person who has been designated, or the person whose designation has ceased to have effect.
- (10) Section 403 applies to the power of OFCOM to make regulations under this section.

67 Subject-matter of universal service conditions

- (1) OFCOM may set any such universal service conditions as they consider appropriate for securing compliance with the obligations set out in the universal service order.
- (2) Universal service conditions applied to a person must include a condition requiring him to publish information about his performance in complying with the universal service conditions that apply to him.
- (3) A condition set in accordance with subsection (2) must contain provision which—
 - (a) requires information published in accordance with it to be updated from time to time and published again;
 - (b) requires information so published to satisfy the requirements that OFCOM consider appropriate for securing that it is adequate; and
 - (c) requires information so published to be framed by reference to the quality of service parameters, definitions and measurement methods for the time being set out in Annex III to the Universal Service Directive.
- (4) A condition set in accordance with that subsection may impose requirements as to—
 - (a) the times at which information published in accordance with it is to be published; and
 - (b) the manner in which that information is to be published.
- (5) Universal service conditions may impose an obligation on a person to whom they apply to do one or both of the following, if required to do so by OFCOM—
 - (a) to make facilities available for enabling information published in pursuance of a condition applied to that person under subsection (2) to be independently audited;
 - (b) to meet the costs of any independent auditing of that information that is required by OFCOM.
- (6) The reference in subsection (5) to the independent auditing of information is a reference to its being audited by a qualified auditor—
 - (a) for accuracy; and
 - (b) for its usefulness in the making of comparisons with information published by other designated universal service providers.
- (7) Universal service conditions may impose performance targets on designated universal service providers with respect to any of the matters in relation to which obligations may be imposed by such conditions.
- (8) In setting a universal service condition, OFCOM must have regard to any guidance about matters relating to pricing that is contained in the universal service order.
- (9) In this section “qualified auditor” means a person eligible, in accordance with Part 2 of the Companies Act 1989 (c. 40), for appointment as a company auditor.

68 Tariffs etc. for universal services

- (1) It shall be the duty of OFCOM—
 - (a) to keep under review universal service tariffs; and
 - (b) to monitor changes to those tariffs.
- (2) Universal service conditions may require one or more of the following—
 - (a) the use of a common tariff, or of common tariffs, in relation to anything mentioned in section 65(2);
 - (b) the use, in such cases as may be specified or described in the conditions, of such special tariffs in relation to anything so mentioned as may be so specified or described;
 - (c) the fixing of tariffs used in accordance with the conditions by the use of such methods, and by reference to such methods of computing costs, as may be so specified or described.
- (3) Universal service conditions must secure that the terms on which a person is provided with anything required by the universal service order do not require him—
 - (a) to pay for an unnecessary additional service; or
 - (b) to pay, in respect of anything required by the order, any amount that is attributable to the provision to him of such a service.
- (4) The references in subsection (3), in relation to a person, to an unnecessary additional service are references to anything the provision of which—
 - (a) he has to accept by reason of his being provided, at his request, with something required by the order (“the requested service”); and
 - (b) is not necessary for the purpose of providing him with the requested service.
- (5) It shall be the duty of OFCOM, in setting a universal service condition about universal service tariffs, to have regard to anything ascertained by them in the performance of their duty under subsection (1).
- (6) References in this section to a universal service tariff are references to any of the tariffs used by designated universal service providers in relation to the things for the time being required by the universal service order.
- (7) References in this section to providing a person with anything include references to making it available or supplying it to him.
- (8) In this section “tariff” includes a pricing structure.

69 Directories and directory enquiry facilities

- (1) This section applies where universal service conditions require a designated universal service provider—
 - (a) to supply a directory capable of being used in connection with the use of an electronic communications network or electronic communications service; or
 - (b) to make available directory enquiry facilities capable of being used for purposes connected with use of such a network or service.
- (2) The universal service conditions applied to the provider must include the conditions that OFCOM consider appropriate for securing that the provider does not unduly discriminate against a source of relevant information—
 - (a) in the compiling of the directory or the answering of directory enquiries; or

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- (b) in the treatment in the directory, or for the purposes of the facilities, of any relevant information from that source.
- (3) In this section—
- (a) references to relevant information are references to information provided for inclusion in the directory or for use in the answering of directory enquiries; and
 - (b) references to a source of relevant information are references to a communications provider or designated universal service provider who provides relevant information.

70 Review of compliance costs

- (1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular designated universal service provider of complying in relation to any matter with any one or more of the universal service conditions applied to him.
- (2) Where—
- (a) regulations under section 66 require the financial burden of so complying to be taken into account in determining whom to designate, and
 - (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,
- that must be the method of calculation applied on a review under this section.
- (3) Where subsection (2) does not apply, the financial burden of so complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the designated universal service provider from—
- (a) his designation; and
 - (b) the application to him of universal service conditions.
- (4) After carrying out a review under this section OFCOM must either—
- (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of designated universal service providers; or
 - (b) themselves carry out an audit of those calculations.
- (5) OFCOM must ensure, in the case of every audit carried out under subsection (4), that a report on the audit—
- (a) is prepared; and
 - (b) if not prepared by OFCOM, is provided to them.
- (6) It shall be the duty of OFCOM, in the case of every review under this section, to publish—
- (a) their conclusions on the review; and
 - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (7) The publication of anything under subsection (6) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

71 Sharing of burden of universal service obligations

- (1) This section applies where OFCOM—
 - (a) have concluded, on a review under section 70, that complying in relation to any matter with universal service conditions imposes a financial burden on a particular designated universal service provider; and
 - (b) have published that conclusion in accordance with that section.
- (2) OFCOM must determine, in the case of the designated universal service provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.
- (3) If—
 - (a) OFCOM determine that it would be unfair for the designated universal service provider to bear, or to continue to bear, the whole or a part of the burden, and
 - (b) an application for a determination under this subsection is made to OFCOM by that provider,OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting that burden.
- (4) The making of any of the following must be in accordance with regulations made by OFCOM—
 - (a) a determination by OFCOM of the extent of the financial burden that exists for the designated universal service provider of complying in relation to any matter with universal service conditions;
 - (b) an application for the purposes of subsection (3)(b);
 - (c) a determination by OFCOM of whether it is or would be unfair for the designated universal service provider to bear, or to continue to bear, the burden of complying in relation to any matter with universal service conditions;
 - (d) a determination of the extent (if any) to which that is or would be unfair.
- (5) The assessment, collection and distribution of contributions under subsection (3) is not to be carried out except in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.
- (6) It shall be the duty of OFCOM to exercise their power to make regulations under this section in the manner which they consider will secure that the assessment, collection and distribution of contributions under subsection (3) is carried out—
 - (a) in an objective and transparent manner;
 - (b) in a manner that does not involve, or tend to give rise to, any undue discrimination against particular communications providers or particular designated universal service providers, or against a particular description of them; and
 - (c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition or of customer demand.
- (7) Regulations made by OFCOM under this section may provide for a scheme containing the provision mentioned in subsection (5), and for any fund set up for the purposes of such a scheme, to be administered either—
 - (a) by OFCOM; or
 - (b) by such other person as may be specified in the regulations.

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- (8) A person other than OFCOM are not to be specified in regulations under this section as the administrator of such a scheme or fund unless he is a person who OFCOM are satisfied is independent of both—
- (a) the persons who are designated universal service providers; and
 - (b) communications providers to whom general conditions are applicable.
- (9) Section 403 applies to the powers of OFCOM to make regulations under this section.

72 Report on sharing mechanism

- (1) This section applies where regulations under section 71 provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section.
- (2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—
- (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything contained in the universal service order;
 - (b) the market benefits for each designated universal service provider that have accrued to him during that period from his designation and from the application to him of universal service conditions; and
 - (c) the contribution made under section 71(3) by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 71.
- (4) Every subsequent report must be prepared in relation to the period of twelve months beginning with the end of the period to which the previous report applied.
- (5) Every report under this section—
- (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and
 - (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section—
- (a) to publish any matter that is confidential in accordance with subsection (7) or (8); or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) A matter is confidential under this subsection if—
- (a) it relates specifically to the affairs of a particular body; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (8) A matter is confidential under this subsection if—
- (a) it relates to the private affairs of an individual; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.

- (9) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.

Access-related conditions

73 Permitted subject-matter of access-related conditions

- (1) The only conditions that may be set under section 45 as access-related conditions are those authorised by this section.
- (2) Access-related conditions may include conditions relating to the provision of such network access and service interoperability as appears to OFCOM appropriate for the purpose of securing—
- (a) efficiency on the part of communications providers and persons making associated facilities available;
 - (b) sustainable competition between them; and
 - (c) the greatest possible benefit for the end-users of public electronic communications services.
- (3) Access-related conditions may include conditions appearing to OFCOM to be appropriate for securing that persons to whom the electronic communications code applies participate, in cases where there are no viable alternative arrangements that may be made, in arrangements for—
- (a) sharing the use of electronic communications apparatus; and
 - (b) apportioning and making contributions towards costs incurred in relation to shared electronic communications apparatus.
- (4) Access-related conditions may include one which—
- (a) is of a technical or operational nature;
 - (b) appears to OFCOM to be appropriate for securing the proper operation of an electronic communications network in compliance with any SMP services condition falling within section 87(3); and
 - (c) is applied to—
 - (i) a person who is required by such an SMP services condition to confer any entitlements to network access; or
 - (ii) a person on whom such an entitlement is or may be conferred in pursuance of a requirement imposed by such an SMP services condition.
- (5) Access-related conditions may include conditions containing any provision required by section 75(2).

74 Specific types of access-related conditions

- (1) The conditions that may be set by virtue of section 73(2) include conditions which, for the purpose of securing end-to-end connectivity for the end-users of public electronic communications services provided by means of a series of electronic communications networks—
- (a) impose obligations on a person controlling network access to any of those networks; and

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- (b) require the interconnection of the networks.
- (2) The conditions that may be set by virtue of section 73(2) also include such conditions imposing obligations on a person providing facilities for the use of application programme interfaces or electronic programme guides as OFCOM consider to be necessary for securing—
- (a) that persons are able to have access to such programme services provided in digital form as OFCOM may determine; and
 - (b) that the facility for using those interfaces or guides is provided on terms which—
 - (i) are fair and reasonable; and
 - (ii) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons.
- (3) In this section—
- “application programme interface” means a facility for allowing software to make use, in connection with any of the matters mentioned in subsection (4), of facilities contained in other software;
- “electronic programme guide” means a facility by means of which a person has access to any service which consists of—
- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services; and
 - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;
- “end-to-end connectivity” means the facility—
- (a) for different end-users of the same public electronic communications service to be able to communicate with each other; and
 - (b) for the end-users of different such services to be able, each using the service of which he is the end-user, to communicate with each other.
- (4) The matters mentioned in subsection (3), in the definition of “application programme interface”, are—
- (a) allowing a person to have access to programme services;
 - (b) allowing a person, other than a communications provider or a person who makes associated facilities available, to make use of an electronic communications network by means of which a programme service is broadcast or otherwise transmitted;
 - (c) allowing a person to become the end-user of a description of public electronic communications service.
- (5) This section is not to be construed as restricting the provision that may be made under section 73(2).

75 Conditional access systems and access to digital services

- (1) It shall be the duty of OFCOM, when setting a condition falling within section 73(4), to ensure that it contains all such provision as they consider appropriate for the purpose of taking account of the relevant international standards.
- (2) It shall be the duty of OFCOM to ensure—

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- (a) that access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service; and
 - (b) that those conditions make all such provision as is required by the provision contained from time to time in Part I of Annex I to the Access Directive (conditions relating to access to digital programme services).
- (3) In this section—
- “conditional access system” means any system, facility, arrangements or technical measure under or by means of which access to programme services requires—
 - (a) a subscription to the service or to a service that includes that service; or
 - (b) an authorisation to view it, or to listen to it, on a particular occasion;
 - “protected programme service” means a programme service the programmes included in which cannot be viewed or listened to in an intelligible form except by the use of a conditional access system.

76 Modification and revocation of conditions imposed under s. 75

- (1) This section applies in the case of conditions falling within section 75(2) which have been set by OFCOM in relation to a particular person (“the system provider”).
- (2) OFCOM must not give effect to a proposal to modify or revoke any of the conditions unless—
 - (a) they have carried out an analysis for the purpose of determining in accordance with this Chapter whether that person is or remains a person on whom SMP services conditions are capable of being imposed;
 - (b) they have determined in consequence of that analysis that he is not; and
 - (c) they are satisfied that the modification or revocation will not have an adverse effect on any or all of the matters mentioned in subsection (3).
- (3) Those matters are—
 - (a) the accessibility to any persons of services that are for the time being included in the list of must-carry services in section 64;
 - (b) the prospects for effective competition in the market for programme services provided by being broadcast or otherwise transmitted in digital form; and
 - (c) the prospects for effective competition in the markets for conditional access systems and other associated facilities.
- (4) In this section “conditional access system” has the same meaning as in section 75.

Privileged supplier conditions

77 Imposition of privileged supplier conditions

- (1) It shall be the duty of OFCOM to secure that privileged supplier conditions containing all such provision falling within subsection (3) as they consider appropriate are applied to every public communications provider to whom this section applies.
- (2) This section applies to every public communications provider who—
 - (a) enjoys special or exclusive rights in relation to the provision of any non-communications services; and

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- (b) is not such a provider in respect only of associated facilities.
- (3) The provision that may be contained in a condition set under section 45 as a privileged supplier condition is any provision that OFCOM consider appropriate for any one or more of the following purposes—
- (a) requiring the provider to whom it applies to keep separate accounts in relation to his public electronic communications network or public electronic communications service and other matters;
 - (b) requiring that provider to submit the accounts of the different parts of his undertaking, and any financial report relating to a part of that undertaking, to a qualified auditor for auditing;
 - (c) requiring the accounts of the different parts of his undertaking to be published;
 - (d) securing, by means other than the keeping of separate accounts, the structural separation of the different parts of his undertaking.
- (4) OFCOM are not required under this section to apply a condition to a person where they are satisfied that that person has an annual turnover in relation to all his communications activities that is less than 750 million.
- (5) Where in a case falling within subsection (4) OFCOM are not required to apply a privileged supplier condition to a person, they may apply such a condition to him if they think fit.
- (6) The reference in subsection (4) to a person's communications activities is a reference to any activities of his that consist in, or are connected with, either or both of the following—
- (a) the provision of any one or more electronic communications networks;
 - (b) the provision of any one or more electronic communications services.
- (7) The making, for the purposes of subsection (4), of—
- (a) a determination of the period in respect of which a person's annual turnover in relation to any activities is computed, and
 - (b) a determination of the amount in Euros of that turnover for any period,
- must be in accordance with such rules as OFCOM consider to be reasonable.
- (8) OFCOM must publish any rules made by them for the purposes of subsection (7) in such manner as they consider appropriate for bringing them to the attention of the persons who, in their opinion, are likely to be affected by them.
- (9) In this section—
- “non-communications services”, in relation to a person, means services other than those consisting in, or connected with, the provision by him of—
 - (a) an electronic communications network; or
 - (b) an electronic communications service;
 - “qualified auditor” means a person eligible, in accordance with Part 2 of the Companies Act 1989 (c. 40), for appointment as a company auditor;
 - “special or exclusive rights” has the same meaning as in Article 86 of the Treaty establishing the European Community.

SMP conditions: procedure

78 Circumstances required for the setting of SMP conditions

- (1) For the purposes of this Chapter a person shall be taken to have significant market power in relation to a market if he enjoys a position which amounts to or is equivalent to dominance of the market.
- (2) References in this section to dominance of a market must be construed in accordance with any applicable provisions of Article 14 of the Framework Directive.
- (3) A person is to be taken to enjoy a position of dominance of a market if he is one of a number of persons who enjoy such a position in combination with each other.
- (4) A person or combination of persons may also be taken to enjoy a position of dominance of a market by reason wholly or partly of his or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that person or combination of persons.
- (5) The matters that must be taken into account in determining whether a combination of persons enjoys a position of dominance of a services market include, in particular, the matters set out in Annex II to the Framework Directive.

79 Market power determinations

- (1) Before making a market power determination, OFCOM must—
 - (a) identify (by reference, in particular, to area and locality) the markets which in their opinion are the ones which in the circumstances of the United Kingdom are the markets in relation to which it is appropriate to consider whether to make the determination; and
 - (b) carry out an analysis of the identified markets.
- (2) In identifying or analysing any services market for the purposes of this Chapter, OFCOM must take due account of all applicable guidelines and recommendations which—
 - (a) have been issued or made by the European Commission in pursuance of the provisions of a Community instrument; and
 - (b) relate to market identification and analysis.
- (3) In considering whether to make or revise a market power determination in relation to a services market, OFCOM must take due account of all applicable guidelines and recommendations which—
 - (a) have been issued or made by the European Commission in pursuance of the provisions of a Community instrument; and
 - (b) relate to market analysis or the determination of what constitutes significant market power.
- (4) The way in which—
 - (a) a market is to be identified for the purposes of this section, or
 - (b) a market power determination is to be made,is by the publication of a notification containing the identification or determination.
- (5) Notifications for the purposes of subsection (4)—

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- (a) may be given separately;
 - (b) may be contained in a single notification relating to both the identification of a market and the making of a market determination in relation to that market; or
 - (c) may be contained in a single notification under section 48(1) with respect to the setting or modification of an SMP condition and either—
 - (i) the making of the market power determination by reference to which OFCOM set or modify that condition; or
 - (ii) the making of that market power determination and the identification of the market in relation to which they make that determination.
- (6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the matters notified.
- (7) References in this section to guidelines and recommendations issued by the European Commission and to a Community instrument include references, respectively, to guidelines and recommendations issued after the commencement of this section and to a Community instrument made after the commencement of this section.

80 Proposals for identifying markets and for market power determinations

- (1) Before OFCOM—
- (a) identify a market for the purposes of making a market power determination, or
 - (b) make a market power determination,
- they must publish a notification of what they are proposing to do.
- (2) Notifications for the purposes of subsection (1)—
- (a) may be given separately;
 - (b) may be contained in a single notification relating to both the identification of a market and the making of a market determination in relation to that market; or
 - (c) may be contained in a single notification under section 48(2) with respect to the setting or modification of an SMP condition and either—
 - (i) the making of the market power determination by reference to which OFCOM are proposing to set or modify that condition; or
 - (ii) the making of that market power determination and the identification of the market in relation to which they are proposing to make that determination.
- (3) A notification under this section relating to a proposal to identify a market or to make a market power determination must—
- (a) state that OFCOM are proposing to identify that market or to make that market power determination;
 - (b) set out the effect of the proposal;
 - (c) give their reasons for making the proposal; and
 - (d) specify the period within which representations may be made to OFCOM about their proposal.
- (4) That period must be a period of not less than one month after the day of the publication of the notification.

- (5) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.
- (6) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have given a notification under this section only if—
 - (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
 - (b) they have had 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) The power of OFCOM to give effect to such a proposal is subject to sections 82 and 83.

81 Delivery of copies of notifications under ss. 79 and 80

- (1) OFCOM must send a copy of every notification published under section 79(4) or 80 to the Secretary of State.
- (2) OFCOM must send to the European Commission a copy of every notification published under section 79(4) with respect to a market power determination in relation to a services market.
- (3) OFCOM must send a copy of every notification published under section 80 which—
 - (a) relates to a proposal to identify a services market or to make a market power determination in relation to such a market; and
 - (b) in OFCOM's opinion would affect trade between member States, to the European Commission and to the regulatory authorities of every other member State.
- (4) OFCOM must, in every other case in which it appears to them appropriate to do so, send—
 - (a) to the European Commission, and
 - (b) to such of the regulatory authorities of the other member States as OFCOM think fit,a copy of a notification published under section 80 which relates to a proposal to identify a services market or to make a market power determination in relation to such a market.

82 European Commission's powers in respect of proposals

- (1) This section applies, in the case of a notification under section 80 with respect to a proposal—
 - (a) to identify a particular market; or
 - (b) to make a market power determination.
- (2) If, within the representations period, OFCOM are notified by the European Commission for the purposes of Article 7(4) of the Framework Directive (market identifications that do not conform to Commission recommendations and determinations that affect trade between member States)—

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- (a) that the Commission considers that giving effect to the proposal would create a barrier in relation to the single European market, or
- (b) that the Commission has serious doubts as to whether giving effect to the proposal would be compatible with the requirements of any Community obligations,

OFCOM are not to give effect to the proposal before the end of a further two months beginning with the end of the representations period.

- (3) Where, before the end of that two month period, the European Commission makes a decision in accordance with Article 7(4) of the Framework Directive that the proposal should be withdrawn, OFCOM—
 - (a) must withdraw it; and
 - (b) shall not be entitled to give effect to it.
- (4) In this section “the representations period”, in relation to a notification under section 80, means the period specified in that notification for the making of representations about the proposals contained in it.

83 Special rules for transnational markets

- (1) This section applies where a services market is for the time being identified by a decision of the European Commission under Article 15(4) of the Framework Directive as a transnational market.
- (2) Where the market area includes the whole or a part of the United Kingdom, OFCOM must enter into and maintain arrangements with the other relevant regulatory authorities about—
 - (a) the extent to which the agreement of all the relevant regulatory authorities is required for the doing of any of the things mentioned in subsection (3); and
 - (b) the procedures to be followed for securing that agreement where it is required.
- (3) Those things are—
 - (a) the identification of the whole or a part of the market as a market in relation to which it is appropriate to determine whether a person has significant market power;
 - (b) the making of such a determination in relation to the whole or a part of the market;
 - (c) the setting of a condition the setting of which requires such a determination to have been made;
 - (d) the modification or revocation of such a condition.
- (4) OFCOM must not do any of the things mentioned in subsection (3) except in accordance with arrangements maintained under that subsection.
- (5) Those arrangements may include arrangements requiring OFCOM, when doing any of those things, to comply with—
 - (a) a decision made, by one or more other regulatory authorities; or
 - (b) a decision made by a person appointed under the arrangements to act on behalf of some or all of the relevant regulatory authorities.
- (6) In this section—

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“market area”, in relation to a services market identified by the European Commission as a transnational market, means the area identified by that Commission as the area for which the market operates; and

“relevant regulatory authorities”, in relation to such a market, means the regulatory authorities for each member State the whole or a part of which is comprised in the market area.

84 Review of services market identifications and determinations

- (1) This section applies where OFCOM have identified and analysed a services market for the purposes of making a market power determination.
- (2) OFCOM must, at such intervals as they consider appropriate, carry out further analyses of the identified market for one or both of the following purposes—
 - (a) reviewing market power determinations made on the basis of an earlier analysis;
 - (b) deciding whether to make proposals for the modification of SMP conditions set by reference to a market power determination made on such a basis.
- (3) It shall be the duty of OFCOM to carry out such a further analysis of a services market as soon as reasonably practicable after recommendations are made by the European Commission that affect the matters that were taken into account, or could have been taken into account, in the case of the last analysis by OFCOM of that market.
- (4) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they must revoke every SMP services condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.
- (5) Before carrying out a further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out an earlier analysis.
- (6) Where, on such a review, OFCOM conclude that the appropriate markets have changed—
 - (a) they must identify the markets they now consider to be the appropriate ones; and
 - (b) those markets shall be the identified markets for the purposes of the further analysis.
- (7) Sections 79 to 83 apply—
 - (a) in relation to the identification of a services market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
 - (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

85 Review of apparatus market identifications and determinations

- (1) This section applies where OFCOM have identified and analysed an apparatus market for the purposes of making a market power determination.

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- (2) OFCOM must, at such intervals as they consider appropriate, carry out further analyses of the identified market for one or both of the following purposes—
 - (a) reviewing market power determinations made on the basis of an earlier analysis;
 - (b) deciding whether to make proposals for the modification of SMP conditions set by reference to any such market power determination.
- (3) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they shall revoke every SMP apparatus condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.
- (4) Before carrying out any further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out any earlier analysis.
- (5) Where on such a review OFCOM conclude that the appropriate markets have changed—
 - (a) they shall identify the markets they now consider to be the appropriate ones; and
 - (b) those markets shall be the identified markets for the purposes of the further analysis.
- (6) Where on such a review OFCOM conclude that there is no person at all with significant market power in relation to the identified market—
 - (a) they must so inform the Secretary of State; and
 - (b) the Secretary of State may by order remove or restrict OFCOM's power under this Chapter to set SMP apparatus conditions by reference to that market.
- (7) Sections 79, 80 and 81(1) apply—
 - (a) in relation to the identification of a apparatus market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
 - (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

86 Cases where review required

- (1) OFCOM must not set an SMP services condition by a notification which does not also make the market power determination by reference to which the condition is set unless—
 - (a) the condition is set by reference to a market power determination which has been reviewed under section 84 and, in consequence of that review, is confirmed in the notification setting the condition; or
 - (b) the condition is set by reference to a market power determination made in relation to a market in which OFCOM are satisfied there has been no material change since the determination was made.
- (2) OFCOM must not modify or revoke SMP services conditions applying to a person except in a case falling within subsection (3) or (4).

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- (3) The first case is where, for the purpose of determining whether to make the modification or revocation, OFCOM have—
 - (a) carried out a further analysis under section 84 of the market in question; and
 - (b) reviewed the market power determination for the time being in force in that person's case.
- (4) The second case is where OFCOM are satisfied that there has not—
 - (a) in the case of an unmodified condition, since the condition was set, or
 - (b) in any other case, since the condition was last modified,been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.
- (5) OFCOM must not modify SMP apparatus conditions applying to a person except where, for the purpose of determining whether to make the modification or revocation, they have—
 - (a) carried out a further analysis under section 85 of the market in question; and
 - (b) reviewed the market power determination for the time being in force in that person's case.
- (6) A change is a material change for the purposes of subsection (1) or (4) if it is one that is material to—
 - (a) the setting of the condition in question; or
 - (b) the modification or revocation in question.

SMP services conditions: subject-matter

87 Conditions about network access etc.

- (1) Where OFCOM have made a determination that a person to whom this section applies ("the dominant provider") has significant market power in an identified services market, they shall—
 - (a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the relevant network or relevant facilities; and
 - (b) apply those conditions to that person.
- (2) This section applies to—
 - (a) a person who provides a public electronic communications network; and
 - (b) a person who makes available facilities that are associated facilities by reference to such a network.
- (3) This section authorises SMP conditions requiring the dominant provider to give such entitlements as OFCOM may from time to time direct as respects—
 - (a) the provision of network access to the relevant network;
 - (b) the use of the relevant network; and
 - (c) the availability of the relevant facilities.
- (4) In determining what conditions authorised by subsection (3) to set in a particular case, OFCOM must take into account, in particular, the following factors—

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- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed network access unnecessary;
 - (b) the feasibility of the provision of the proposed network access;
 - (c) the investment made by the person initially providing or making available the network or other facility in respect of which an entitlement to network access is proposed;
 - (d) the need to secure effective competition in the long term;
 - (e) any rights to intellectual property that are relevant to the proposal; and
 - (f) the desirability of securing that electronic communications services are provided that are available throughout the member States.
- (5) The conditions authorised by subsection (3) may include provision—
- (a) for securing fairness and reasonableness in the way in which requests for network access are made and responded to; and
 - (b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions.
- (6) The SMP conditions authorised by this section also include one or more of the following—
- (a) a condition requiring the dominant provider not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with network access to the relevant network or with the availability of the relevant facilities;
 - (b) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;
 - (c) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which he is willing to enter into an access contract;
 - (d) a condition requiring the terms and conditions on which the dominant provider is willing to enter into an access contract to include such terms and conditions as may be specified or described in the condition;
 - (e) a condition requiring the dominant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which he is willing to enter into an access contract.
- (7) The SMP conditions authorised by this section also include conditions requiring the dominant provider to maintain a separation for accounting purposes between such different matters relating—
- (a) to network access to the relevant network, or
 - (b) to the availability of the relevant facilities,
- as OFCOM may from time to time direct.
- (8) The SMP conditions authorised by subsection (7) include conditions imposing requirements about the accounting methods to be used in maintaining the separation.
- (9) The SMP conditions authorised by this section also include (subject to section 88) conditions imposing on the dominant provider—
- (a) such price controls as OFCOM may direct in relation to matters connected with the provision of network access to the relevant network, or with the availability of the relevant facilities;

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- (b) such rules as they may make in relation to those matters about the recovery of costs and cost orientation;
 - (c) such rules as they may make for those purposes about the use of cost accounting systems; and
 - (d) obligations to adjust prices in accordance with such directions given by OFCOM as they may consider appropriate.
- (10) The SMP conditions authorised by subsection (9) include conditions requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations imposed by virtue of that subsection.
- (11) Where OFCOM set a condition authorised by this section which imposes rules on the dominant provider about the use of cost accounting systems, it shall be their duty also to set, and to apply to him, an SMP condition which imposes on him an obligation—
- (a) to make arrangements for a description to be made available to the public of the cost accounting system used in pursuance of that condition; and
 - (b) to include in that description details of—
 - (i) the main categories under which costs are brought into account for the purposes of that system; and
 - (ii) the rules applied for the purposes of that system with respect to the allocation of costs.
- (12) In this section—
- “access contract” means—
- (a) a contract for the provision by a person to whom this section applies to another person of network access to the relevant network; or
 - (b) a contract under which the relevant facilities are made available by a person to whom this section applies to another person;
- “the relevant facilities”, in relation to a person to whom this section applies, means the associated facilities made available by that person in relation to a public electronic communications network; and
- “the relevant network”, in relation to such a person, means the public electronic communications network provided by him.

88 Conditions about network access pricing etc.

- (1) OFCOM are not to set an SMP condition falling within section 87(9) except where—
- (a) it appears to them from the market analysis carried out for the purpose of setting that condition that there is a relevant risk of adverse effects arising from price distortion; and
 - (b) it also appears to them that the setting of the condition is appropriate for the purposes of—
 - (i) promoting efficiency;
 - (ii) promoting sustainable competition; and
 - (iii) conferring the greatest possible benefits on the end-users of public electronic communications services.
- (2) In setting an SMP condition falling within section 87(9) OFCOM must take account of the extent of the investment in the matters to which the condition relates of the person to whom it is to apply.

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- (3) For the purposes of this section there is a relevant risk of adverse affects arising from price distortion if the dominant provider might—
- (a) so fix and maintain some or all of his prices at an excessively high level, or
 - (b) so impose a price squeeze,
- as to have adverse consequences for end-users of public electronic communications services.
- (4) In considering the matters mentioned in subsection (1)(b) OFCOM may—
- (a) have regard to the prices at which services are available in comparable competitive markets;
 - (b) determine what they consider to represent efficiency by using such cost accounting methods as they think fit.
- (5) In this section “the dominant provider” has the same meaning as in section 87.

89 Conditions about network access in exceptional cases

- (1) This section applies where—
- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market;
 - (b) that person is the provider of an electronic communications network or a person who makes associated facilities available; and
 - (c) OFCOM consider that there are exceptional circumstances making it appropriate for conditions with respect to the provision of network access to be applied to the dominant provider in addition to those that are required to be or may be applied to him apart from this section.
- (2) OFCOM may set the additional SMP conditions and apply them to the dominant provider if—
- (a) they have submitted the additional conditions to the European Commission for approval; and
 - (b) the Commission has approved the imposition on the dominant provider of the obligations contained in those conditions.

90 Conditions about carrier selection and pre-selection

- (1) This section applies where—
- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market; and
 - (b) it appears to OFCOM that the market is a market relating to services for the provision of public electronic communications networks for use by means of connections at fixed locations.
- (2) It shall be the duty of OFCOM to set, and to apply to the dominant provider, such SMP conditions authorised by this section as they think fit.
- (3) The SMP conditions authorised by this section are conditions requiring the dominant provider to do one or both of the following—
- (a) to make a relevant connection facility available to every person to whom he provides a public electronic communications service;

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- (b) for the purpose of making such a connection facility available to such persons, to make facilities for interconnection available to a person providing an electronic communications service.
- (4) Where OFCOM set a condition requiring the dominant provider to make a relevant connection facility available, they shall also set such SMP conditions as they consider appropriate—
- (a) with respect to the relationship to costs of any prices fixed for the use of the facility; and
 - (b) for the purpose of securing that prices and other charges imposed on the persons to whom public electronic communications services are provided by the dominant provider do not constitute a disincentive to the use of the facility.
- (5) Where OFCOM set conditions authorised by this section, those conditions may include provision imposing obligations as to the manner in which one or both of the following are to be made available in accordance with the conditions—
- (a) the relevant connection facility in question;
 - (b) the facilities for interconnection that are to be made available to a person providing an electronic communications service.
- (6) In this section “relevant connection facility” is a facility which—
- (a) allows a person to whom a public electronic communications service is provided by means of an electronic communications network to select which public electronic communications service provided wholly or partly by means of that network is the service that he wishes to use; and
 - (b) enables that selection to be made either—
 - (i) by the use of a telephone number on each separate occasion on which a selection is made; or
 - (ii) by designating in advance the selection that is to apply on every occasion when no such selection as is mentioned in sub-paragraph (i) is made.

91 Conditions about regulation of services etc. for end-users

- (1) Where—
- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market (“the relevant market”),
 - (b) the relevant market is one for the end-users of public electronic communications services that are available in that market, and
 - (c) it appears to OFCOM that the test in subsection (2) is satisfied in the case of that provider,
- they shall set, and apply to that provider, such SMP conditions authorised by this section as they consider appropriate.
- (2) That test is that OFCOM are unable, by the setting of conditions of the sorts specified in subsection (3), to perform, or fully to perform, their duties under section 4 in relation to the market situation in the relevant market.
- (3) The sorts of conditions referred to in subsection (2) are—
- (a) access-related conditions; and
 - (b) SMP conditions authorised or required by sections 87 to 90.

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- (4) The reference in subsection (2) to the market situation in the relevant market is a reference to the situation revealed by such market analyses of that market as may have been carried out for the purposes of this Chapter.
- (5) The SMP conditions authorised by this section are conditions imposing on the dominant provider such regulatory controls as OFCOM may from time to time direct in relation to the provision by that provider of any public electronic communications service to the end-users of that service.
- (6) Where OFCOM set a condition which is authorised by this section and imposes regulatory control on tariffs or other matters to which costs are relevant, they shall also set, and apply to the dominant provider, an SMP condition which requires him, to the extent that they consider it appropriate—
 - (a) to use such cost accounting systems as may be determined by them;
 - (b) to have the use of those systems audited annually by a qualified auditor; and
 - (c) to publish an annual statement about compliance by the dominant provider with the obligations imposed by virtue of paragraph (a).
- (7) It shall be the duty of OFCOM to provide the European Commission with all such information as the Commission requires them to provide about—
 - (a) conditions authorised by this section that are set by OFCOM; and
 - (b) the cost accounting systems used, by the persons to whom those conditions apply, in relation to the services regulated in accordance with the conditions.
- (8) In this section “qualified auditor” means a person eligible, in accordance with Part 2 of the Companies Act 1989 (c. 40), for appointment as a company auditor.

92 Conditions about leased lines

- (1) This section applies where—
 - (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market; and
 - (b) it appears to OFCOM that the market in relation to which that market power determination has been made is a market relating to the provision of any such leased lines as are for the time being identified by the European Commission in the List of Standards published in the Official Journal of the European Communities.
- (2) It shall be the duty of OFCOM to set, and to apply to the dominant provider, such SMP conditions authorised by this section as they consider appropriate.
- (3) The SMP conditions authorised by this section are conditions for applying, so far as required by the provisions for the time being contained in Annex VII to the Universal Service Directive, the principles of non-discrimination, cost orientation and transparency in relation to the leased lines identified as mentioned in subsection (1).
- (4) In this section “leased line” means an electronic communications service the provision of which consists in the reservation of a fixed amount of transmission capacity between fixed points on the same or different electronic communications networks.

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

SMP apparatus conditions: subject-matter

93 Conditions about apparatus supply

- (1) Where OFCOM have made a determination that a person (“the dominant supplier”) has significant market power in an identified apparatus market, they may—
 - (a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the supply of electronic communications apparatus; and
 - (b) apply those conditions to that person.
- (2) This section authorises the setting of SMP conditions of each of the following descriptions—
 - (a) conditions requiring the dominant supplier to maintain such a separation for accounting purposes between matters relating to the supply of electronic communications apparatus and other matters as may be described in the conditions;
 - (b) conditions imposing requirements about the accounting methods to be used in maintaining the separation; and
 - (c) conditions imposing such rules as OFCOM may make, for the purpose of securing the maintenance of the separation, about the use of cost accounting systems.
- (3) This section also authorises the setting of SMP conditions imposing price controls in relation to the hiring of telephones which are hardwired to an electronic communications network.
- (4) Conditions set under this section must not make provision in relation to the supply of electronic communications apparatus unless the apparatus is of a description of apparatus as respects the supply of which the dominant supplier has been found to have significant market power.
- (5) For the purposes of this section a telephone is hardwired to an electronic communications network where, in order for it to be used with that network—
 - (a) it has to be physically attached to apparatus comprised in the network; and
 - (b) the attachment has to be effected by a process that requires the use of a tool.

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).

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- (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.
- (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

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- (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—
 - (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;

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- (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
 - (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—

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- (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.
- (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.

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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;
 - (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.

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

- (3) A direction under this section—
 - (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.
- (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—
 - (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—

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- (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;
 - (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.

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- (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.

OFCOM's duty to intervene on network access issues

105 Consideration and determination of network access questions

- (1) This section applies where—
 - (a) it appears to OFCOM that a network access question has arisen and needs to be determined; and
 - (b) they consider that, for the purpose of determining that question, it would be appropriate for them to exercise their powers under this Chapter to set, modify or revoke conditions falling within subsection (2).
- (2) Conditions falling within this subsection are—
 - (a) access-related conditions authorised by section 73(2) or (4); and
 - (b) SMP services conditions authorised by section 87.

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- (3) Before considering whether, for the purpose of determining the question that has arisen, to set, modify or revoke conditions falling within subsection (2), OFCOM must publish a notification of their proposal to consider that matter.
- (4) If, after considering that matter, OFCOM decide not to exercise their powers to set, modify or revoke conditions falling within subsection (2), they must publish a notification of their decision.
- (5) A notification under this section must be published in the manner that OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, would be likely to be affected by action taken for determining the network access question that appears to them to have arisen.
- (6) In this section “network access question” means a question relating to network access or the terms or conditions on which it is or may be provided in a particular case.

Electronic communications code

106 Application of the electronic communications code

- (1) In this Chapter “the electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12).
- (2) Schedule 3 (which amends Schedule 2 to the Telecommunications Act 1984 (c. 12) for the purpose of translating the telecommunications code into a code applicable in the context of the new regulatory regime established by this Act) shall have effect.
- (3) The electronic communications code shall have effect—
 - (a) in the case of a person to whom it is applied by a direction given by OFCOM; and
 - (b) in the case of the Secretary of State or any Northern Ireland department where the Secretary of State or that department is providing or proposing to provide an electronic communications network.
- (4) The only purposes for which the electronic communications code may be applied in a person's case by a direction under this section are—
 - (a) the purposes of the provision by him of an electronic communications network; or
 - (b) the purposes of the provision by him of a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- (5) A direction applying the electronic communications code in any person's case may provide for that code to have effect in his case—
 - (a) in relation only to such places or localities as may be specified or described in the direction;
 - (b) for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or
 - (c) for the purposes only of the provision of such conduit system, or part of a conduit system, as may be so specified or described.

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- (6) The Secretary of State may by order provide for the electronic communications code to have effect for all purposes with a different amount substituted for the amount for the time being specified in paragraph 16(3) of the code (minimum compensation).
- (7) In this section “conduit” includes a tunnel, subway, tube or pipe.

107 Procedure for directions applying code

- (1) OFCOM are not to give a direction applying the electronic communications code in any person’s case except on an application made for the purpose by that person.
- (2) If OFCOM publish a notification setting out their requirements with respect to—
 - (a) the content of an application for a direction applying the electronic communications code, and
 - (b) the manner in which such an application is to be made,such an application must be made in accordance with the requirements for the time being in force.
- (3) OFCOM may—
 - (a) from time to time review the requirements for the time being in force for the purposes of subsection (2); and
 - (b) on any such review, modify them in such manner as they think fit by giving a notification of the revised requirements.
- (4) In considering whether to apply the electronic communications code in any person’s case, OFCOM must have regard, in particular, to each of the following matters—
 - (a) the benefit to the public of the electronic communications network or conduit system by reference to which the code is to be applied to that person;
 - (b) the practicability of the provision of that network or system without the application of the code;
 - (c) the need to encourage the sharing of the use of electronic communications apparatus;
 - (d) whether the person in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of—
 - (i) the application of the code in his case; and
 - (ii) any conduct of his in relation to the matters with which the code deals.
- (5) For the purposes of subsections (6) and (7) of section 3 OFCOM’s duty under subsection (4) ranks equally with their duties under that section.
- (6) Before giving a direction under section 106, OFCOM must—
 - (a) publish a notification of their proposal to give the direction; and
 - (b) consider any representations about that proposal that are made to them within the period specified in the notification.
- (7) A notification for the purposes of subsection (6)(a) must contain the following—
 - (a) a statement of OFCOM’s proposal;
 - (b) a statement of their reasons for that proposal;
 - (c) a statement of the period within which representations may be made to them about the proposal.
- (8) The statement of OFCOM’s proposal must—

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- (a) contain a statement that they propose to apply the code in the case of the person in question;
 - (b) set out any proposals of theirs to impose terms under section 106(5);
- but this subsection is subject to sections 113(7) and 115(5).
- (9) The period specified as the period within which representations may be made must end no less than one month after the day of the publication of the notification.
- (10) The publication by OFCOM of a notification for any of the purposes of this section must be a publication in such manner as OFCOM consider appropriate for bringing the notification to the attention of the persons who, in their opinion, are likely to be affected by it.

108 Register of persons in whose case code applies

- (1) It shall be the duty of OFCOM to establish and maintain a register of persons in whose case the electronic communications code applies by virtue of a direction under section 106.
- (2) OFCOM must record in the register every direction given under that section.
- (3) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.
- (4) It shall be the duty of OFCOM to publish a notification setting out—
- (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (5) The publication of a notification under subsection (4) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) OFCOM must make the register available for public inspection—
- (a) during such hours, and
 - (b) on payment of such fees,
- as are set out in the notification for the time being in force under subsection (4).

109 Restrictions and conditions subject to which code applies

- (1) Where the electronic communications code is applied in any person's case by a direction given by OFCOM, that code is to have effect in that person's case subject to such restrictions and conditions as may be contained in regulations made by the Secretary of State.
- (2) In exercising his power to make regulations under this section it shall be the duty of the Secretary of State to have regard to each of the following—
- (a) the duties imposed on OFCOM by sections 3 and 4;
 - (b) the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside;
 - (c) the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;

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- (d) the need to encourage the sharing of the use of electronic communications apparatus;
 - (e) the need to secure that a person in whose case the code is applied will be able to meet liabilities arising as a consequence of—
 - (i) the application of the code in his case; and
 - (ii) any conduct of his in relation to the matters with which the code deals.
- (3) The power of the Secretary of State to provide by regulations for the restrictions and conditions subject to which the electronic communications code has effect includes power to provide for restrictions and conditions which are framed by reference to any one or more of the following—
- (a) the making of a determination in accordance with the regulations by a person specified in the regulations;
 - (b) the giving of an approval or consent by a person so specified; or
 - (c) the opinion of any person.
- (4) Before making any regulations under this section, the Secretary of State must consult—
- (a) OFCOM; and
 - (b) such other persons as he considers appropriate.

110 Enforcement of restrictions and conditions

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person in whose case the electronic communications code applies is contravening, or has contravened, a requirement imposed by virtue of any restrictions or conditions under section 109, they may give him 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 requirement and the 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 any notified requirement of which he remains in contravention; and
 - (c) remedying the consequences of notified contraventions.
- (4) Subject to subsections (5) to (7), 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.
- (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—

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- (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 requirement, OFCOM may give a further notification in respect of the same contravention of that requirement 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) 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 requirement; 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 111(2) or 112(2) that the contravention to which the previous notification related did occur.

111 Enforcement notification for contravention of code restrictions

- (1) This section applies where—
- (a) a person (“the notified provider”) has been given a notification under section 110;
 - (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 been in contravention, in one or more of the respects notified, of a requirement specified in the notification under section 110; and
 - (b) that he has not, during the period allowed under section 110, taken all such steps as they consider appropriate—
 - (i) for complying with that requirement; and
 - (ii) for remedying the consequences of the notified contravention of that requirement.

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- (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 requirement 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.

112 Penalties for contravention of code restrictions

- (1) This section applies (in addition to section 111) where—
 - (a) a person (“the notified provider”) has been given a notification under section 110;
 - (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 been in contravention, in any of the respects notified, of a requirement specified in the notification under section 110; and
 - (b) has not, during the period allowed under that section, taken all such steps as they consider appropriate—
 - (i) for complying with the notified requirement; and
 - (ii) for remedying the consequences of the notified contravention of that requirement.
- (3) Where a notification under section 110 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 under this section 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.
- (6) The amount of a penalty imposed under this section is to be such amount not exceeding £10,000 as OFCOM determine to be—

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- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (7) 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 requirements contraventions of which have been notified to him under section 110; and
 - (c) any steps taken by him for remedying the consequences of those contraventions.
- (8) 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.
- (9) 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.
- (10) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (6).
- (11) No order is to be made containing provision authorised by subsection (10) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

113 Suspension of application of code

- (1) OFCOM may suspend the application of the electronic communications code in any person's case if they are satisfied—
- (a) that he is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);
 - (b) that the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;
 - (c) that an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and
 - (d) that the suspension of the application of the code is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.
- (2) OFCOM may, to the extent specified in subsection (3), suspend the application in that person's case of the electronic communications code if—
- (a) the electronic communications code has been applied by a direction under section 106 in any person's case; and

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- (b) OFCOM give a direction under section 42, 100, 132 or 140 for the suspension or restriction of that person's entitlement to provide an electronic communications network, or a part of such a network.
- (3) The extent, in any person's case, of a suspension under subsection (2) must not go beyond the application of the code for the purposes of so much of an electronic communications network as that person is prohibited from providing by virtue of the suspension or restriction of his entitlement to provide such a network, or part of a network.
- (4) OFCOM may, to the extent specified in subsection (5), suspend the application in that person's case of the electronic communications code if—
 - (a) the electronic communications code has been applied by a direction under section 106 in any person's case; and
 - (b) that person is a person in whose case there have been repeated and serious contraventions of requirements imposed by virtue of any restrictions or conditions under section 109.
- (5) The extent, in any person's case, of a suspension under subsection (4) must not go beyond the following applications of the code in his case—
 - (a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
 - (b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and
 - (c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.
- (6) A suspension under this section of the application of the code in any person's case must be by a further direction given to that person by OFCOM under section 106.
- (7) The statement required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal is a statement of their proposal to suspend the application of the code.
- (8) A suspension of the application of the electronic communications code in any person's case—
 - (a) shall cease to have effect if the suspension is under subsection (2) and the network suspension or restriction ceases to have effect; but
 - (b) subject to that shall continue in force until such time (if any) as it is withdrawn by OFCOM.
- (9) In subsection (8) the reference to the network suspension or restriction, in relation to a suspension of the application of the electronic communications code, is a reference to the suspension or restriction of an entitlement to provide an electronic communications network, or part of such a network, which is the suspension or restriction by reference to which the application of the code was suspended under subsection (2).
- (10) Subject to subsection (11), where the application of the electronic communications code is suspended in a person's case, he shall not, while it is so suspended, be entitled to exercise any right conferred on him by or by virtue of the code.

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- (11) The suspension, in a person's case, of the application of the electronic communications code does not, except so far as otherwise provided by a scheme contained in an order under section 117—
- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;
 - (b) affect anything done under the code before the suspension of its application; or
 - (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.
- (12) Subsection (9) of section 42 applies for the purposes of subsection (1) as it applies for the purposes of that section.

114 Procedure for directions under s. 113

- (1) Except in an urgent case, OFCOM are not to give a direction under section 113(4) suspending the application of the electronic communications code in the case of any person (“the operator”) unless they have—
- (a) notified the operator of the proposed suspension and of the steps (if any) that they are proposing to take under section 117;
 - (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation that has given rise to the proposed suspension; and
 - (c) considered every representation and proposal made to them during the period allowed by them for the operator 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 113 in an urgent case, OFCOM must provide the operator with an opportunity of—
- (a) making representations about the effect of the direction and of any steps taken under section 117 in connection with the suspension; and
 - (b) proposing steps for remedying the situation that has given rise to 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 circumstances appearing to OFCOM to require the suspension fall within subsection (5), to allow time, before giving a direction under section 113, 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) Circumstances 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 operator) 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.

115 Modification and revocation of application of code

- (1) OFCOM may at any time modify the terms on which, by virtue of section 106(5), the code is applied in a person's case.
- (2) OFCOM may revoke a direction applying the electronic communications code in a person's case if an application for the revocation has been made by that person.
- (3) If at any time it appears to OFCOM that a person in whose case the electronic communications code has been applied is not the provider of an electronic communications network or conduit system for the purposes of which the code applies, OFCOM may revoke the direction applying the code in his case.
- (4) A modification or revocation under this section shall be by a further direction under section 106 to the person in whose case the electronic communications code has been applied by the direction being modified or revoked.
- (5) The matters required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal are whichever of the following is applicable—
 - (a) a statement of their proposal to modify terms imposed under section 106(5);
 - (b) a statement of their proposal to revoke the direction applying the code.

116 Notification of cessation by person to whom code applies

- (1) This section applies where, by virtue of a direction under section 106, the electronic communications code applies in any person's case for the purposes of the provision by him of—
 - (a) an electronic communications network which is not of a description designated for the purposes of section 33; or
 - (b) such a system of conduits as is mentioned in section 106(4)(b).
- (2) If that person ceases to provide that network or conduit system, he must notify OFCOM of that fact.
- (3) A notification under this section must be given within such period and in such manner as may be required by OFCOM.
- (4) OFCOM may impose a penalty on a person who fails to comply with a requirement imposed by or under this section.
- (5) The amount of a penalty imposed on a person under this section is to be such amount not exceeding £1,000 as OFCOM may determine to be both—
 - (a) appropriate; and
 - (b) proportionate to the matter in respect of which it is imposed.
- (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

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- (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.
- (8) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).
- (9) No order is to be made containing provision authorised by subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

117 Transitional schemes on cessation of application of code

- (1) Where it appears to OFCOM—
 - (a) that the electronic communications code has ceased or is to cease to apply, to any extent, in the case of any person (“the former operator”),
 - (b) that it has ceased or will cease so to apply for either of the reasons specified in subsection (2), and
 - (c) that it is appropriate for transitional provision to be made in connection with it ceasing to apply in the case of the former operator,
 they may by order make a scheme containing any such transitional provision as they think fit in that case.
- (2) Those reasons are—
 - (a) the suspension under section 113 of the application of the code in the former operator’s case;
 - (b) the revocation or modification under section 115 of the direction applying the code in his case.
- (3) A scheme contained in an order under this section may, in particular—
 - (a) impose any one or more obligations falling within subsection (4) on the former operator;
 - (b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;
 - (c) authorise the retention of apparatus on any land pending its subsequent use for the purposes of an electronic communications network, electronic communications service or conduit system to be provided by any person;
 - (d) provide for the transfer to such persons as may be specified in, or determined in accordance with, the scheme of any rights or liabilities arising out of any agreement or other obligation entered into or incurred in pursuance of the code by the former operator;
 - (e) provide, for the purposes of any provision contained in the scheme by virtue of any of the preceding paragraphs, for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, OFCOM.
- (4) The obligations referred to in subsection (3)(a) are—

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- (a) an obligation to remove anything installed in pursuance of any right conferred by or in accordance with the code;
 - (b) an obligation to restore land to its condition before anything was done in pursuance of any such right; or
 - (c) an obligation to pay the expenses of any such removal or restoration.
- (5) Sections 110 to 112 apply in relation to the requirements imposed by virtue of a scheme contained in an order under this section as they apply in relation to a requirement imposed by virtue of restrictions or conditions under section 109.
- (6) Section 403 applies to the power of OFCOM to make an order under this section.

118 Compulsory acquisition of land etc.

Schedule 4 (which provides for compulsory acquisition of land by the provider of an electronic communications network in whose case the electronic communications code applies and for entry on land by persons nominated by such a provider) shall have effect.

119 Power to give assistance in relation to certain proceedings

- (1) This section applies where any actual or prospective party to any proceedings falling within subsection (2) (other than the operator, within the meaning of the electronic communications code) applies to OFCOM for assistance under this section in relation to those proceedings.
- (2) The proceedings falling within this subsection are any actual or prospective proceedings in which there falls to be determined any question arising under, or in connection with—
- (a) the electronic communications code as applied in any person's case by a direction under section 106; or
 - (b) any restriction or condition subject to which that code applies.
- (3) OFCOM may grant the application if, on any one or more of the following grounds, they think fit to do so—
- (a) on the ground that the case raises a question of principle;
 - (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without assistance under this section;
 - (c) by reason of any other special consideration.
- (4) Assistance by OFCOM under this section may include—
- (a) giving advice or arranging for the giving of advice by a solicitor or counsel;
 - (b) procuring or attempting to procure the settlement of the matter in dispute;
 - (c) arranging for the giving of any assistance usually given by a solicitor or counsel—
 - (i) in the steps preliminary or incidental to proceedings; or
 - (ii) in arriving at, or giving effect to, a compromise to avoid proceedings or to bring them to an end;
 - (d) arranging for representation by a solicitor or counsel;
 - (e) arranging for the giving of any other assistance by a solicitor or counsel;

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- (f) any other form of assistance which OFCOM consider appropriate.
- (5) Nothing in subsection (4)(d) shall be taken to affect the law and practice regulating the descriptions of persons who may appear in, conduct or defend any proceedings, or who may address the court in any proceedings.
- (6) In so far as expenses are incurred by OFCOM in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of OFCOM—
 - (a) on any costs or expenses which (whether by virtue of a judgment or order of a court, or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
 - (b) so far as relates to costs or expenses, on the applicant's rights under a compromise or settlement arrived at in connection with that matter to avoid proceedings, or to bring them to an end.
- (7) A charge conferred by subsection (6) is subject to—
 - (a) any charge imposed by section 10(7) of the Access to Justice Act 1999 (c. 22) and any provision made by or under Part 1 of that Act for the payment of any sum to the Legal Services Commission;
 - (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 (c. 47); or
 - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)).

Regulation of premium rate services

120 Conditions regulating premium rate services

- (1) OFCOM shall have the power, for the purpose of regulating the provision, content, promotion and marketing of premium rate services, to set conditions under this section that bind the persons to whom they are applied.
- (2) Conditions under this section may be applied either—
 - (a) generally to every person who provides a premium rate service; or
 - (b) to every person who is of a specified description of such persons, or who provides a specified description of such services.
- (3) The only provision that may be made by conditions under this section is provision requiring the person to whom the condition applies to comply, to the extent required by the condition, with—
 - (a) directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions; and
 - (b) if there is no such code, the provisions of the order for the time being in force under section 122.
- (4) The power to set a condition under this section includes power to modify or revoke the conditions for the time being in force under this section.

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- (5) Sections 47 and 48 apply to the setting, modification and revocation of a condition under this section as they apply to the setting, modification and revocation of a condition under section 45.
- (6) OFCOM must send a copy of every notification published under section 48(1) with respect to a condition under this section to the Secretary of State.
- (7) A service is a premium rate service for the purposes of this Chapter if—
- (a) it is a service falling within subsection (8);
 - (b) there is a charge for the provision of the service;
 - (c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - (d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.
- (8) A service falls within this subsection if its provision consists in—
- (a) the provision of the contents of communications transmitted by means of an electronic communications network; or
 - (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.
- (9) For the purposes of this Chapter a person provides a premium rate service (“the relevant service”) if—
- (a) he provides the contents of the relevant service;
 - (b) he exercises editorial control over the contents of the relevant service;
 - (c) he is a person who packages together the contents of the relevant service for the purpose of facilitating its provision;
 - (d) he makes available a facility comprised in the relevant service; or
 - (e) he falls within subsection (10), (11) or (12).
- (10) A person falls within this subsection if—
- (a) he is the provider of an electronic communications service used for the provision of the relevant service; and
 - (b) under arrangements made with a person who is a provider of the relevant service falling within subsection (9)(a) to (d), he is entitled to retain some or all of the charges received by him in respect of the provision of the relevant service or of the use of his electronic communications service for the purposes of the relevant service.
- (11) A person falls within this subsection if—
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and
 - (b) an agreement relating to the use of the network for the provision of that service subsists between the provider of the network and a person who is a provider of the relevant service falling within subsection (9)(a) to (d).
- (12) A person falls within this subsection if—
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and

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- (b) the use of that network for the provision of premium rate services, or of services that include or may include premium rate services, is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the relevant service by virtue of subsection (10) or (11).
- (13) Where one or more persons are employed or engaged under the direction of another to do any of the things mentioned in subsection (9)(a) to (d), only that other person shall be a provider of the relevant service for the purposes of this Chapter.
- (14) References in this section to a facility include, in particular, references to—
- (a) a facility for making a payment for goods or services;
 - (b) a facility for entering a competition or claiming a prize; and
 - (c) a facility for registering a vote or recording a preference.
- (15) In this section—
- “approved code” means a code for the time being approved under section 121;
 - “enforcement authority”, in relation to such a code, means the person who under the code has the function of enforcing it; and
 - “intermediary service provider” means a person who—
 - (a) provides an electronic communications service used for the provision of the relevant service or an electronic communications network so used; and
 - (b) is a party to an agreement with—
 - (i) a provider of the relevant service falling within subsection (9) (a) to (d), or
 - (ii) another intermediary service provider,
 which relates to the use of that electronic communications service or network for the provision of premium rate services, or of services that include or may include premium rate services.

121 Approval of code for premium rate services

- (1) If it appears to OFCOM—
- (a) that a code has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services;
 - (b) that the code contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services; and
 - (c) that it would be appropriate for them to approve that code for the purposes of section 120,
- they may approve that code for those purposes.
- (2) OFCOM are not to approve a code for those purposes unless they are satisfied—
- (a) that there is a person who, under the code, has the function of administering and enforcing it; and
 - (b) that that person is sufficiently independent of the providers of premium rate services;

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- (c) that adequate arrangements are in force for funding the activities of that person in relation to the code;
 - (d) that the provisions of the code are objectively justifiable in relation to the services to which it relates;
 - (e) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (f) that those provisions are proportionate to what they are intended to achieve; and
 - (g) that, in relation to what those provisions are intended to achieve, they are transparent.
- (3) OFCOM are not for those purposes to approve so much of a code as imposes an obligation as respects a premium rate service on a person who is a provider of the service by virtue only of section 120(12) (“the relevant provider”) unless they are satisfied that the obligation—
- (a) arises only if there is no one who is a provider of the service otherwise than by virtue of section 120(12) against whom it is practicable to take action;
 - (b) arises only after a notice identifying the service and setting out respects in which requirements of the code have been contravened in relation to it has been given to the relevant provider by the person responsible for enforcing the code; and
 - (c) is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.
- (4) The provision that may be contained in a code and approved under this section includes, in particular, provision about the pricing of premium rate services and provision for the enforcement of the code.
- (5) The provision for the enforcement of a code that may be approved under this section includes—
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 123(2);
 - (b) provision requiring a provider of a premium rate service to secure that the provision of the service is suspended or otherwise ceases or is restricted in any respect;
 - (c) provision for the imposition on a person, in respect of a contravention of the code, of a temporary or permanent prohibition or restriction on his working in connection with the provision of premium rate services or, in the case of a body corporate, on its providing such services or on its carrying on other activities in connection with their provision.
- (6) OFCOM may, at any time, for the purposes of section 120—
- (a) approve modifications that have been made to an approved code; or
 - (b) withdraw their approval from an approved code.
- (7) Where OFCOM give or withdraw an approval for the purposes of section 120, they must give notification of their approval or of its withdrawal.
- (8) The notification must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the approval or withdrawal.

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122 Orders by OFCOM in the absence of a code under s. 121

- (1) OFCOM may make an order under this section if, at any time, they consider that there is no code in force to which they think it would be appropriate to give, or to continue to give, their approval under section 121.
- (2) An order under this section may make such of the following provisions as OFCOM think fit—
 - (a) provision imposing requirements with respect to the provision and contents of premium rate services, and with respect to the facilities made available in the provision of such services (including provision about pricing);
 - (b) provision imposing requirements with respect to the arrangements made by the providers of premium rate services for the promotion and marketing of those services;
 - (c) provision for the enforcement of requirements imposed by virtue of paragraph (a) or (b);
 - (d) provision making other arrangements for the purposes of those requirements.
- (3) The power to make provision by an order under this section includes, in particular—
 - (a) power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;
 - (b) power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person;
 - (c) power to confer jurisdiction with respect to any matter on OFCOM themselves;
 - (d) power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both;
 - (e) power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order;
 - (f) power to make provision falling within section 121(5)(c) for the enforcement of the provisions of the order; and
 - (g) power to make such other provision as OFCOM think fit for the enforcement of such awards and directions.
- (4) An order under this section may require such providers of premium rate services as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with—
 - (a) the establishment and maintenance, in accordance with such an order, of any body corporate or procedure; or
 - (b) the making of other arrangements for the purposes of the requirements of such an order.
- (5) An order under this section is not to impose an obligation as respects a premium rate service on a person who is a provider of the service by virtue only of section 120(12) (“the relevant provider”) unless the obligation—
 - (a) arises only if there is no one who is a provider of the service otherwise than by virtue of section 120(12) against whom it is practicable to take action;
 - (b) arises only after a notice identifying the service and setting out respects in which requirements of the order have been contravened in relation to it has been given to the relevant provider by OFCOM; and

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- (c) is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.
- (6) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.
- (7) Section 403 applies to the power of OFCOM to make an order under this section.
- (8) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

123 Enforcement of s. 120 conditions

- (1) Sections 94 to 96 apply in relation to a contravention of conditions set under section 120 as they apply in relation to a contravention of a condition set under section 45.
- (2) The amount of the penalty imposed under section 96 as applied by this section is to be such amount not exceeding £100,000 as OFCOM determine to be—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (3) 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 (as applied); and
 - (c) any steps taken by him for remedying the consequences of those contraventions.
- (4) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (2).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

124 Suspending service provision for contraventions of s. 120 conditions

- (1) OFCOM may give a direction under this section to a person who is a communications provider (“the contravening provider”) if they are satisfied—
 - (a) that he is or has been in serious and repeated contravention of conditions set under section 120;
 - (b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 (as applied by section 123) or both, to secure compliance with the contravened conditions has failed;
 - (c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions; and
 - (d) that the giving of the direction is required for reasons of public policy.
- (2) OFCOM may also give a direction under this section to a person who is a communications provider (“the contravening provider”) if they are satisfied—

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- (a) that he is, or has been, in contravention of conditions set under section 120 in respect of a premium rate service;
 - (b) that the circumstances of the contravention make it appropriate for OFCOM to suspend or restrict the provision of premium rate services provided by the contravening provider without the conditions set out in subsection (1) being satisfied; and
 - (c) that in those circumstances the giving of the direction is urgently required for reasons of public policy.
- (3) A direction under this section is—
- (a) a direction to the contravening provider to secure the suspension of the provision of premium rate services provided by him; or
 - (b) a direction requiring him to secure compliance with restrictions, set out in the direction, on the provision of such services.
- (4) A direction under this section—
- (a) must specify the services 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.
- (5) 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.
- (6) 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.
- (7) 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 services as they may determine.
- (8) Sections 102 and 103 apply in the case of a direction under this section as they apply in the case of a direction under section 100, but as if references in section 103(1) to an electronic communications network or electronic communications service were references to a premium rate service.
- (9) For the purposes of this section there are repeated contraventions by a person of conditions set under section 120 to the extent that—
- (a) in the case of a previous notification given to that person under section 94 (as applied by section 123), OFCOM have determined for the purposes of section 95(2) or 96(2) (as so applied) that such a contravention did occur; and

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- (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 120.
- (10) For the purposes of this section the seriousness of repeated contraventions of conditions set under section 120 has to be determined by reference to the seriousness of the contraventions of the approved code or order by reference to which the conditions have effect.

Offences relating to networks and services

125 Dishonestly obtaining electronic communications services

- (1) A person who—
- (a) dishonestly obtains an electronic communications service, and
 - (b) does so with intent to avoid payment of a charge applicable to the provision of that service,
- is guilty of an offence.
- (2) It is not an offence under this section to obtain a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c. 48) (dishonestly obtaining a broadcasting or cable programme service provided from a place in the UK).
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

126 Possession or supply of apparatus etc. for contravening s. 125

- (1) A person is guilty of an offence if, with an intention falling within subsection (3), he has in his possession or under his control anything that may be used—
- (a) for obtaining an electronic communications service; or
 - (b) in connection with obtaining such a service.
- (2) A person is guilty of an offence if—
- (a) he supplies or offers to supply anything which may be used as mentioned in subsection (1); and
 - (b) he knows or believes that the intentions in relation to that thing of the person to whom it is supplied or offered fall within subsection (3).
- (3) A person's intentions fall within this subsection if he intends—
- (a) to use the thing to obtain an electronic communications service dishonestly;
 - (b) to use the thing for a purpose connected with the dishonest obtaining of such a service;
 - (c) dishonestly to allow the thing to be used to obtain such a service; or
 - (d) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service.

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- (4) An intention does not fall within subsection (3) if it relates exclusively to the obtaining of a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c. 48).
- (5) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (6) In this section, references, in the case of a thing used for recording data, to the use of that thing include references to the use of data recorded by it.

127 Improper use of public electronic communications network

- (1) A person is guilty of an offence if he—
 - (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
 - (b) causes any such message or matter to be so sent.
- (2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he—
 - (a) sends by means of a public electronic communications network, a message that he knows to be false,
 - (b) causes such a message to be sent; or
 - (c) persistently makes use of a public electronic communications network.
- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (4) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service (within the meaning of the Broadcasting Act 1990 (c. 42)).

Persistent misuse of network or service

128 Notification of misuse of networks and services

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services, 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 use that OFCOM consider constitutes persistent misuse; and
 - (c) specifies the period during which the person notified has an opportunity of making representations about the matters notified.
- (3) That period must not be less than the following—
 - (a) in an urgent case, seven days; and
 - (b) in any other case, one month.

- (4) A case is an urgent case for the purposes of subsection (3) if OFCOM consider—
 - (a) that the misuse in question is continuing; and
 - (b) that the harm it causes makes it necessary for it to be stopped as soon as possible.
- (5) For the purposes of this Chapter a person misuses an electronic communications network or electronic communications service if—
 - (a) the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or
 - (b) he uses the network or service to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety.
- (6) For the purposes of this Chapter the cases in which a person is to be treated as persistently misusing a network or service include any case in which his misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents—
 - (a) a pattern of behaviour or practice; or
 - (b) recklessness as to whether persons suffer annoyance, inconvenience or anxiety.
- (7) For the purpose of determining whether misuse on a number of different occasions constitutes persistent misuse for the purposes of this Chapter, each of the following is immaterial—
 - (a) that the misuse was in relation to a network on some occasions and in relation to a service on others;
 - (b) that different networks or services were involved on different occasions; and
 - (c) that the persons who were or were likely to suffer annoyance inconvenience or anxiety were different on different occasions.
- (8) If he considers that appropriate alternative means of dealing with it exists, the Secretary of State may by order provide that a use of a description specified in the order is not to be treated for the purposes of this Chapter as a misuse of an electronic communications network or electronic communications service.

129 Enforcement notifications for stopping persistent misuse

- (1) This section applies where—
 - (a) a person (“the notified misuser”) has been given a notification under section 128;
 - (b) OFCOM have allowed the notified misuser 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 misuser an enforcement notification if they are satisfied—
 - (a) that he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service; and
 - (b) that he has not, since the giving of the notification, taken all such steps as OFCOM consider appropriate for—

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- (i) securing that his misuse is brought to an end and is not repeated; and
 - (ii) remedying the consequences of the notified misuse.
- (3) An enforcement notification is a notification which imposes a requirement on the notified misuser to take all such steps for—
- (a) securing that his misuse is brought to an end and is not repeated, and
 - (b) remedying the consequences of the notified misuse,
- as may be specified in the notification.
- (4) A decision of OFCOM to give an enforcement notification to a person 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.
- (7) References in this section to remedying the consequences of misuse include references to paying an amount to a person—
- (a) by way of compensation for loss or damage suffered by that person; or
 - (b) in respect of annoyance, inconvenience or anxiety to which he has been put.

130 Penalties for persistent misuse

- (1) This section applies (in addition to section 129) where—
- (a) a person (“the notified misuser”) has been given a notification under section 128;
 - (b) OFCOM have allowed the notified misuser 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 misuser if he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service.
- (3) OFCOM may also impose a penalty on the notified misuser if he has contravened a requirement of an enforcement notification given in respect of the notified misuse.
- (4) The amount of a penalty imposed is to be such amount not exceeding £5,000 as OFCOM determine to be—
- (a) appropriate; and
 - (b) proportionate to the misuse in respect of which it is imposed.
- (5) In making that determination OFCOM must have regard to—
- (a) any representations made to them by the notified misuser;
 - (b) any steps taken by him for securing that his misuse is brought to an end and is not repeated; and
 - (c) any steps taken by him for remedying the consequences of the notified misuse.

- (6) Where OFCOM impose a penalty on a person under this section, they shall—
 - (a) notify the person penalised; 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.
- (8) It is to be possible for a person to be both liable for an offence under sections 125 to 127 and to have a penalty imposed on him under this section in respect of the same conduct.
- (9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (4).
- (10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

131 Statement of policy on persistent misuse

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to the exercise of their powers under sections 128 to 130.
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 128 to 130, to have regard to the statement for the time being in force under this section.

Powers to deal with emergencies

132 Powers to require suspension or restriction of a provider's entitlement

- (1) If the Secretary of State has reasonable grounds for believing that it is necessary to do so—
 - (a) to protect the public from any threat to public safety or public health, or
 - (b) in the interests of national security,he may, by a direction to OFCOM, require them to give a direction under subsection (3) to a person (“the relevant provider”) who provides an electronic communications network or electronic communications service or who makes associated facilities available.
- (2) OFCOM must comply with a requirement of the Secretary of State under subsection (1) by giving to the relevant provider such direction under subsection (3)

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as they consider necessary for the purpose of complying with the Secretary of State's direction.

- (3) A direction under this section is—
 - (a) a direction that the entitlement of the relevant 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.
- (4) A direction under subsection (3)—
 - (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.
- (5) A direction under subsection (3)—
 - (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 relevant provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.
- (6) Those conditions may include a condition requiring the making of payments—
 - (a) by way of compensation for loss or damage suffered by the relevant 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.
- (7) Where OFCOM give a direction under subsection (3), they shall, as soon as practicable after doing so, provide that person with an opportunity of—
 - (a) making representations about the effect of the direction; and
 - (b) proposing steps for remedying the situation.
- (8) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (3) or otherwise), they may, without revoking it, at any time modify the terms of a direction under subsection (3) in such manner as they consider appropriate.
- (9) If the Secretary of State considers it appropriate to do so, he may, by a direction to OFCOM, require them to revoke a direction under subsection (3).
- (10) Where OFCOM modify or revoke a direction they have given under subsection (3), they may do so—
 - (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.
- (11) It shall be the duty of OFCOM to comply with—
 - (a) a requirement under subsection (9) to revoke a direction; and

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- (b) a requirement contained in that direction as to how they should exercise their powers under subsection (10) in the case of the required revocation.

133 Enforcement of directions under s. 132

- (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 132; or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person guilty of an offence under subsection (1) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under section 132 shall be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Where a duty is owed by virtue of subsection (3) 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.
- (5) In proceedings brought against a person by virtue of subsection (4)(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 in question.
- (6) Sections 94 to 99 apply in relation to a contravention of conditions imposed by a direction under section 132 as they apply in relation to a contravention of conditions set under section 45.

Restrictions in leases and licences

134 Restrictions in leases and licences

- (1) This section applies where provision contained in a lease, licence or other agreement relating to premises has the effect of imposing on the occupier a prohibition or restriction under which his choice of—
 - (a) the person from whom he obtains electronic communications services, or particular electronic communications services, or
 - (b) the person through whom he arranges to be provided with electronic communications services, or particular electronic communications services,is confined to a person with an interest in the premises, to a person selected by a person with such an interest or to persons who are one or the other.
- (2) This section also applies where—

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- (a) provision contained in a lease for a year or more has the effect of imposing any other prohibition or restriction on the lessee with respect to an electronic communications matter; or
 - (b) provision contained in an agreement relating to premises to which a lease for a year or more applies has the effect of imposing a prohibition or restriction on the lessee with respect to such a matter.
- (3) A provision falling within subsection (1) shall have effect—
- (a) as if the prohibition or restriction applied only where the lessor, licensor or other party to the agreement has not given his consent to a departure from the requirements imposed by the prohibition or restriction; and
 - (b) as if the lessor, licensor or other party were required not to withhold that consent unreasonably.
- (4) A provision falling within subsection (2)(a) or (b) shall have effect—
- (a) in relation to things done inside a building occupied by the lessee under the lease, or
 - (b) for purposes connected with the provision to the lessee of an electronic communications service,
- as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.
- (5) Where (whether by virtue of this section or otherwise) a provision falling within subsection (1) or (2) imposes a requirement on a lessor, licensor or party to an agreement not unreasonably to withhold his consent—
- (a) in relation to an electronic communications matter, or
 - (b) to the obtaining by the occupier of premises of an electronic communications service from or through a particular person,
- the question whether the consent is unreasonably withheld has to be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.
- (6) OFCOM may by order provide for this section not to apply in the case of such provisions as may be described in the order.
- (7) References in this section to electronic communications matters are references to—
- (a) the provision of an electronic communications network or electronic communications service;
 - (b) the connection of electronic communications apparatus to a relevant electronic communications network or of any such network to another; and
 - (c) the installation, maintenance, adjustment, repair, alteration or use for purposes connected with the provision of such a network or service of electronic communications apparatus.
- (8) In this section—
- “alteration” has the same meaning as in the electronic communications code;
 - “lease” includes—
- (a) a leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and an agreement to grant such a tenancy, and

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- (b) in Scotland, a sub-lease and an agreement to grant a sub-lease, and “lessor” and “lessee” are to be construed accordingly;
“relevant electronic communications network” means—
 - (a) a public electronic communications network that is specified for the purposes of this section in an order made by the Secretary of State; or
 - (b) an electronic communications network that is, or is to be, connected (directly or indirectly) to such a network.
- (9) This section applies to provisions contained in leases, licences or agreements granted or entered into before the commencement of this section to the extent only that provision to that effect is contained in an order made by OFCOM.
- (10) This section is not to be construed as affecting the operation of paragraph 2(3) of the electronic communications code (lessees etc. bound by rights granted under code by owners).
- (11) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.
- (12) Section 403 applies to the powers of OFCOM to make orders under this section.
- (13) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Information provisions

135 Information required for purposes of Chapter 1 functions

- (1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under this Chapter.
- (2) The persons falling within this subsection are—
 - (a) a communications provider;
 - (b) a person who has been a communications provider;
 - (c) a person who makes, or has made, any associated facilities available to others;
 - (d) a person, other than a communications provider, to whom a universal service condition applies or has applied;
 - (e) a person who supplies electronic communications apparatus;
 - (f) a person not falling within the preceding paragraphs who appears to OFCOM to have information required by them for the purpose of carrying out their functions under this Chapter.
- (3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require for any one or more of the following purposes—
 - (a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under this Chapter has occurred or is occurring;
 - (b) ascertaining or verifying the charges payable by a person under section 38;
 - (c) ascertaining whether a provision of a condition set under section 45 which is for the time being in force continues to be effective for the purpose for which it was made;

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- (d) ascertaining or verifying amounts payable by virtue of a condition falling within section 51(1)(d);
 - (e) making a designation in accordance with regulations made under section 66;
 - (f) carrying out a review under section 66 or 70;
 - (g) identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter;
 - (h) ascertaining whether a question has arisen that gives rise to their duty under section 105;
 - (i) considering a matter in exercise of that duty;
 - (j) statistical purposes connected with the carrying out of any of OFCOM's functions under this Chapter.
- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) The powers in this section are subject to the limitations in section 137.

136 Information required for related purposes

- (1) OFCOM may require—
- (a) a communications provider, or
 - (b) a person who makes associated facilities available to others,
- to provide OFCOM with all such information as they consider necessary for the purpose specified in subsection (2).
- (2) That purpose is the carrying out—
- (a) with a view to publication, and
 - (b) in the interest of the end-users of public electronic communications services, of comparative overviews of the quality and prices of such services.
- (3) OFCOM may also require—
- (a) a communications provider, or
 - (b) a person who makes associated facilities available to others,
- to provide them, for use for such statistical purposes as they think fit, with information relating to any electronic communications network, electronic communications service or associated facilities.
- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) The powers in this section are subject to the limitations in section 137.

137 Restrictions on imposing information requirements

- (1) This section limits the purposes for which, and manner in which, information may be required under sections 135 and 136.
- (2) OFCOM are not to require the provision of information for the purpose of ascertaining whether a contravention of a general condition has occurred, or is occurring, unless—
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;

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- (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the general condition in question has been complied with;
 - (c) the condition in question is one which OFCOM have reason to suspect is one that has been or is being contravened; or
 - (d) the condition in question is one falling within section 51(1)(d).
- (3) OFCOM are not to require the provision of information under section 135 or 136 except—
 - (a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and
 - (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.
- (4) The reasons for requiring information for statistical purposes under section 135 or 136 must set out the statistical purposes for which the information is required.
- (5) Except in the case of a demand made in the manner authorised by subsection (6), a demand for information required under section 135 or 136 must be contained in a notice served on the person from whom the information is required.
- (6) In the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under section 38, the demand may—
 - (a) be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who are described in the demand as the persons from whom the information is required; and
 - (b) take the form of a general demand for a person so described to provide information when specified conditions relevant to his liability to such charges are satisfied in his case.

138 Notification of contravention of information requirements

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 135 or 136, 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 requirement 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; and
 - (b) complying with any notified requirement of which he remains in contravention.
- (4) Subject to subsections (5) to (7), 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.
- (5) OFCOM may, if they think fit, allow a longer period for doing those things either—

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- (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 requirement, OFCOM may give a further notification in respect of the same contravention of that requirement 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) 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 requirement; 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 139(2) that the contravention to which the previous notification related did occur.

139 Penalties for contravention of information requirements

- (1) This section applies where—
- (a) a person (“the notified person”) has been given a notification under section 138;
 - (b) OFCOM have allowed the notified person 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 person if—
- (a) they are satisfied that he has, in one or more of the respects notified, been in contravention of the requirement notified under section 138;

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- (b) he has not, during the period allowed under that section, complied with the notified requirement; and
 - (c) no proceedings for an offence under section 144 have been brought against the notified person in respect of the contravention.
- (3) Where a notification under section 138 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) The amount of a penalty imposed under this section is to be such amount not exceeding £50,000 as OFCOM determine to be both—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) In making that determination OFCOM must have regard to—
 - (a) any representations made to them by the notified person; and
 - (b) any steps taken by him towards complying with the requirements contraventions of which have been notified to him under section 138.
- (7) 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.
- (8) 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.
- (9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).
- (10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

140 Suspending service provision for information contraventions

- (1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available (“the contravening provider”) if they are satisfied—
 - (a) that he is or has been in serious and repeated contravention of requirements imposed under sections 135 and 136, or either of them;
 - (b) the requirements are not requirements imposed for purposes connected with the carrying out of OFCOM’s functions in relation to SMP apparatus conditions;

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- (c) that an attempt, by the imposition of penalties under section 139 or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and
 - (d) 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
 - (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 any 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 requirements imposed under sections 135 and 136, or either of them, to the extent that—
- (a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and
 - (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 such requirements;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements or of requirements under different sections.

141 Suspending apparatus supply for information contraventions

- (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 requirements imposed under section 135;
 - (b) that an attempt, by the imposition of penalties under section 139 or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements 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 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 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 contraventions by a person of requirements imposed under section 135 are repeated contraventions if—

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- (a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and
- (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 such requirements;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements.

142 Procedure for directions under ss. 140 and 141

- (1) Except in an urgent case, OFCOM are not to give a direction under section 140 or 141 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;
 - (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 140 or 141 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 140 or 141, 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—

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

“contravening provider” has the same meaning as in section 140; and
“contravening supplier” has the same meaning as in section 141.

143 Enforcement of directions under ss. 140 and 141

- (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 140; 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 141; 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 140 or 141 as they apply in relation to a contravention of conditions set under section 45.

144 Offences in connection with information requirements

- (1) A person who fails to provide information in accordance with a requirement of OFCOM under section 135 or 136 is guilty of an offence and shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (2) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show—
 - (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
 - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (3) A person is guilty of an offence if—
 - (a) in pursuance of any requirement under section 135 or 136, he provides any information that is false in any material particular; and
 - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.
- (4) A person guilty of an offence under subsection (3) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) Proceedings for an offence under subsection (1) may be brought in respect of a contravention by a person of a requirement imposed under section 135 or 136 only if—
 - (a) OFCOM have given the person a notification under section 138 in respect of that contravention;

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- (b) the period allowed under that section for doing the things mentioned in subsection (3) of that section has expired without the required information having been provided; and
- (c) OFCOM have not imposed a financial penalty under section 139 in respect of that contravention.

145 Statement of policy on information gathering

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to—
 - (a) the exercise of their powers under sections 135 to 136; and
 - (b) the uses to which they are proposing to put information obtained under those sections.
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 135 to 144 to have regard to the statement for the time being in force under this section.

146 Provision of information by OFCOM

- (1) OFCOM must comply with a request made by a person for the purposes of this section—
 - (a) to notify the person whether or not a notification is required to be submitted by him under section 33;
 - (b) to notify the person whether a notification submitted by him for the purposes of that section satisfies the requirements of this Chapter;
 - (c) to provide the person with such information about his rights as may be necessary for the purpose of facilitating the negotiation by him of his right to network access; or
 - (d) to provide the person with such information as they consider necessary to enable the applicant to apply for a direction under section 106 to be made in his case.
- (2) A request for the purposes of this section must be made in such manner as OFCOM may require.
- (3) OFCOM are not required to comply with a request under this section if (without having been asked to do so) they have already given that person the notification or information for which he is asking.
- (4) Any notification or information which under subsection (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request for the notification or information was made to OFCOM.

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Abolition of telecommunications licensing etc.

147 Repeal of provisions of Telecommunications Act 1984

The following provisions of the Telecommunications Act 1984 (c. 12) shall cease to have effect—

- (a) sections 5 to 8 (licensing provisions);
- (b) sections 9 to 11 (public telecommunications systems);
- (c) sections 12 to 15 (modification of licences);
- (d) sections 16 to 19 (enforcement of licences); and
- (e) sections 27A to 27L (standards of performance of designated public telecommunications operators).

Local authority powers in relation to networks and services

148 Powers of local authorities in connection with networks

- (1) A local authority may borrow money for the purpose of providing a public electronic communications network or public electronic communications service.
- (2) A local authority may—
 - (a) provide a public electronic communications network part of which is outside their area; and
 - (b) provide a public electronic communications service even if some of the persons to whom they provide the service are outside their area.
- (3) In this section, a “local authority” means—
 - (a) in relation to England, a London borough council or a district council;
 - (b) in relation to Wales, a county council or a county borough council;
 - (c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

Grants for networks and services in Northern Ireland

149 Grants by Department of Enterprise, Trade and Investment

- (1) The Department of Enterprise, Trade and Investment may, in accordance with this section, make payments to persons engaged in, or in commercial activities connected with—
 - (a) the provision of electronic communications networks and electronic communications services in Northern Ireland; or
 - (b) improving the extent, quality and reliability of such networks or services.
- (2) A payment shall not be made under this section unless in the opinion of the Department of Enterprise, Trade and Investment—
 - (a) the making of the payment is likely to achieve—
 - (i) one or more of the purposes set out in subsection (1); and
 - (ii) any other purposes prescribed by regulations made by that Department with the approval of the Department of Finance and Personnel; and

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- (b) the amount of the payment is reasonable having regard to all the circumstances.
- (3) Payments under this section shall—
 - (a) be of such amounts, and
 - (b) be made subject to such conditions (including conditions as to repayment), as the Department of Enterprise, Trade and Investment may determine.
- (4) This section extends only to Northern Ireland.

150 Grants by district councils

- (1) This section applies where a district council in Northern Ireland consider that it would be for the benefit of their area—
 - (a) for a public electronic communications network or electronic communications service to be provided by a particular person;
 - (b) for facilities to be made available by a particular person for the purposes of, or in connection with, the provision of such a network or service; or
 - (c) for such a network or service that is being provided by a particular person, or for any such facilities that are being so made available by a particular person, to continue to be provided or made available.
- (2) The district council may—
 - (a) undertake to pay to that person, and
 - (b) pay him,
 whatever sums they think appropriate for, or towards, compensating him for losses sustained in the provision of the network or service or in making the facilities available.
- (3) For the purposes of this section it is immaterial—
 - (a) in the case of a network, whether any part of the network is situated in the council's area; and
 - (b) in the case of a service or facility, whether any of the persons to whom the service or facility is provided or made available are in that area.

Interpretation of Chapter 1

151 Interpretation of Chapter 1

- (1) In this Chapter—
 - “the Access Directive” means Directive [2002/19/EC](#) of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities;
 - “access-related condition” means a condition set as an access-related condition under section 45;
 - “allocation” and “adoption”, in relation to telephone numbers, and cognate expressions, are to be construed in accordance with section 56;
 - “apparatus market”, in relation to a market power determination, is to be construed in accordance with section 46(9)(b);

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“designated universal service provider” means a person who is for the time being designated in accordance with regulations under section 66 as a person to whom universal service conditions are applicable;

“electronic communications apparatus” —

- (a) in relation to SMP apparatus conditions and in section 141, means apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals (within the meaning of section 32) that are transmitted by means of an electronic communications network; and
- (b) in all other contexts, has the same meaning as in the electronic communications code;

“the electronic communications code” has the meaning given by section 106(1);

“end-user”, in relation to a public electronic communications service, means—

- (a) a person who, otherwise than as a communications provider, is a customer of the provider of that service;
- (b) a person who makes use of the service otherwise than as a communications provider; or
- (c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;

“the Framework Directive” means Directive [2002/21/EC](#) of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services;

“general condition” means a condition set as a general condition under section 45;

“interconnection” is to be construed in accordance with subsection (2);

“market power determination” means—

- (a) a determination, for the purposes of provisions of this Chapter, that a person has significant market power in an identified services market or an identified apparatus market, or
- (b) a confirmation for such purposes of a market power determination reviewed on a further analysis under section 84 or 85;

“misuse”, in relation to an electronic communications network or electronic communications service, is to be construed in accordance with section 128(5) and (8), and cognate expressions are to be construed accordingly;

“network access” is to be construed in accordance with subsection (3);

“persistent” and “persistently”, in relation to misuse of an electronic communications network or electronic communications service, are to be construed in accordance with section 128(6) and (7);

“premium rate service” is to be construed in accordance with section 120(7);

“privileged supplier condition” means a condition set as a privileged supplier condition under section 45;

“provider”, in relation to a premium rate service, is to be construed in accordance with section 120(9) to (12), and cognate expressions are to be construed accordingly;

“public communications provider” means—

- (a) a provider of a public electronic communications network;

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- (b) a provider of a public electronic communications service; or
- (c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service;

“public electronic communications network” means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;

“public electronic communications service” means any electronic communications service that is provided so as to be available for use by members of the public;

“regulatory authorities” is to be construed in accordance with subsection (5);

“relevant international standards” means—

- (a) any standards or specifications from time to time drawn up and published in accordance with Article 17 of the Framework Directive;
- (b) the standards and specifications from time to time adopted by—
 - (i) the European Committee for Standardisation,
 - (ii) the European Committee for Electrotechnical Standardisation;
 - or
 - (iii) the European Telecommunications Standards Institute; and
- (c) the international standards and recommendations from time to time adopted by—
 - (i) the International Telecommunication Union;
 - (ii) the International Organisation for Standardisation; or
 - (iii) the International Electrotechnical Committee;

“service interoperability” means interoperability between different electronic communications services;

“services market”, in relation to a market power determination or market identification, is to be construed in accordance with section 46(8)(a);

“significant market power” is to be construed in accordance with section 78;

“SMP condition” means a condition set as an SMP condition under section 45, and “SMP services condition” and “SMP apparatus condition” are to be construed in accordance with subsections (8) and (9) of that section respectively;

“telephone number” has the meaning given by section 56(5);

“the Universal Service Directive” means Directive [2002/22/EC](#) of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services;

“universal service condition” means a condition set as a universal service condition under section 45;

“the universal service order” means the order for the time being in force under section 65.

- (2) In this Chapter references to interconnection are references to the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one public electronic communications network to another for the purpose of enabling the persons using one of them to be able—

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- (a) to communicate with users of the other one; or
 - (b) to make use of services provided by means of the other one (whether by the provider of that network or by another person).
- (3) In this Chapter references to network access are references to—
- (a) interconnection of public electronic communications networks; or
 - (b) any services, facilities or arrangements which—
 - (i) are not comprised in interconnection; but
 - (ii) are services, facilities or arrangements by means of which a communications provider or person making available associated facilities is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of anything mentioned in subsection (4);
- and references to providing network access include references to providing any such services, making available any such facilities or entering into any such arrangements.
- (4) The things referred to in subsection (3)(b) are—
- (a) any electronic communications network or electronic communications service provided by another communications provider;
 - (b) any apparatus comprised in such a network or used for the purposes of such a network or service;
 - (c) any facilities made available by another that are associated facilities by reference to any network or service (whether one provided by that provider or by another);
 - (d) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an electronic communications service.
- (5) References in this Chapter to the regulatory authorities of member States are references to such of the authorities of the member States as have been notified to the European Commission as the regulatory authorities of those States for the purposes of the Framework Directive.
- (6) For the purposes of this Chapter, where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, that contravention shall be taken to continue after the end of that period, or after that time, until that thing is done.
- (7) References in this Chapter to remedying the consequences of a contravention include references to paying an amount to a person—
- (a) by way of compensation for loss or damage suffered by that person; or
 - (b) in respect of annoyance, inconvenience or anxiety to which he has been put.
- (8) In determining for the purposes of provisions of this Chapter whether a contravention is a repeated contravention for any purposes, a notification of a contravention under that provision shall be disregarded if it has been withdrawn before the imposition of a penalty in respect of the matters notified.
- (9) For the purposes of this section a service is made available to members of the public if members of the public are customers, in respect of that service, of the provider of that service.

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

CHAPTER 2

SPECTRUM USE

General functions relating to spectrum use

152 General functions of OFCOM in relation to radio spectrum

- (1) It shall be a function of OFCOM—
 - (a) to give such advice in relation to the use of the electro-magnetic spectrum for wireless telegraphy,
 - (b) to provide such other services, and
 - (c) to maintain such records,as they consider appropriate for the purpose of facilitating or managing the use of that spectrum for wireless telegraphy.
- (2) It shall be a function of OFCOM, in relation to the use of the electro-magnetic spectrum for wireless telegraphy—
 - (a) to give such further advice,
 - (b) to provide such other services, and
 - (c) to maintain such other records,as the Secretary of State may, for the purpose of securing compliance with the international obligations of the United Kingdom, require them to provide.
- (3) The advice, the other services and the records that OFCOM may give, provide or maintain under this section include advice, other services and records with respect to the use of the electro-magnetic spectrum at places outside the United Kingdom.
- (4) The powers of OFCOM to carry out research, or to arrange for others to carry out research, are to be exercisable, in particular, for ascertaining, for the purpose of carrying out their functions under this section, information about—
 - (a) the demands for use of the electro-magnetic spectrum for wireless telegraphy in the United Kingdom;
 - (b) the effects, in the United Kingdom, of any such use of that spectrum;
 - (c) likely future developments in relation to those matters; and
 - (d) any other connected matters that OFCOM think relevant.
- (5) OFCOM may make a grant to any person if, in their opinion, the making of the grant is likely to promote—
 - (a) the efficient use in the United Kingdom of the electro-magnetic spectrum for wireless telegraphy; or
 - (b) the efficient management of that use.
- (6) A grant—
 - (a) may be made to a person holding a wireless telegraphy licence or a grant of recognised spectrum access under section 159 or to any other person; and
 - (b) is to be made on such terms and conditions as OFCOM consider appropriate; and those terms and conditions may include terms requiring the repayment of the grant in specified circumstances.
- (7) The consent of the Treasury is to be required—

- (a) for the making of a grant under subsection (5); and
 - (b) for the terms and conditions on which such a grant is made.
- (8) Where OFCOM are required to give advice or provide another service to a person under this section, they are to be entitled to make the giving of the advice or the provision of the other service conditional on the payment to them of such sums—
- (a) as they may determine in advance; or
 - (b) as may be agreed between them and that person.
- (9) In this section references to providing a service to a person include references to a service consisting in—
- (a) the entry of that person’s particulars in a register or other record kept by OFCOM for the purpose of carrying out their functions under this section; or
 - (b) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

153 United Kingdom Plan for Frequency Authorisation

- (1) It shall be the duty of OFCOM, from time to time as they think fit, to publish a document (to be known as “the United Kingdom Plan for Frequency Authorisation”).
- (2) The plan must set out—
- (a) the frequencies that, in relation to the United Kingdom, have been allocated for particular purposes for wireless telegraphy and are available for assignment; and
 - (b) the purposes for which the different frequencies have been allocated.

154 Duties of OFCOM when carrying out spectrum functions

- (1) It shall be the duty of OFCOM, in carrying out their functions under the enactments relating to the management of the radio spectrum, to have regard, in particular, to—
- (a) the extent to which the electro-magnetic spectrum is available for use, or further use, for wireless telegraphy;
 - (b) the demand for use of that spectrum for wireless telegraphy; and
 - (c) the demand that is likely to arise in future for the use of that spectrum for wireless telegraphy.
- (2) It shall also be their duty, in carrying out their functions under those enactments to have regard, in particular, to the desirability of promoting—
- (a) the efficient management and use of the part of the electro-magnetic spectrum available for wireless telegraphy;
 - (b) the economic and other benefits that may arise from the use of wireless telegraphy;
 - (c) the development of innovative services; and
 - (d) competition in the provision of electronic communications services.
- (3) In the application of this section to the functions of OFCOM under the enactments relating to the management of the radio spectrum other than section 2 of the Wireless Telegraphy Act 1998 (c. 6) (exercise of power to prescribe wireless telegraphy licence fees), OFCOM may disregard such of the matters mentioned in the preceding subsections as appear to them—

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- (a) to be matters to which they are not required to have regard apart from this section; and
 - (b) to have no application to the case in question.
- (4) Where it appears to OFCOM that any of their duties under this section conflict with one or more of their duties under sections 3 to 6, priority must be given to their duties under those sections.
- (5) Where it appears to OFCOM that any of their duties under this section conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

155 Advisory service in relation to interference

- (1) It shall be a function of OFCOM to provide a service consisting in the giving of advice and assistance to persons complaining of interference with wireless telegraphy.
- (2) In this section “interference”, in relation to wireless telegraphy, has the same meaning as in the Wireless Telegraphy Act 1949 (c. 54).

156 Directions with respect to the radio spectrum

- (1) The Secretary of State may by order give general or specific directions to OFCOM about the carrying out by OFCOM of their functions under the enactments relating to the management of the radio spectrum.
- (2) The directions that may be given under this section include a direction requiring OFCOM to secure that such frequencies of the electro-magnetic spectrum as may be specified in the direction are kept available or become available—
- (a) for such uses or descriptions of uses, or
 - (b) for such users or descriptions of users,
- as may be so specified.
- (3) The directions that may be given under this section include a direction requiring OFCOM to exercise their powers under the provisions mentioned in subsection (4)—
- (a) in such cases,
 - (b) in such manner,
 - (c) subject to such restrictions and constraints, and
 - (d) with a view to achieving such purposes,
- as may be specified in the direction or as may be determined by the Secretary of State in accordance with the order.
- (4) Those provisions are—
- (a) the proviso to section 1 of the Wireless Telegraphy Act 1949 (exemptions from requirement of wireless telegraphy licence); and
 - (b) sections 1 to 3A of the Wireless Telegraphy Act 1998 (c. 6) (payments in respect of wireless telegraphy licences and grants of recognised spectrum access).
- (5) This section is not to be construed as restricting the power of the Secretary of State under section 5, without the making of an order, to give a direction for any of the purposes for the time being specified in subsection (3) of that section.

157 Procedure for directions under s. 156

- (1) An order containing a direction under section 156, if it is not one falling within subsection (2) or (3) of that section, must state the purpose for which the direction is given.
- (2) Before making an order containing a direction under section 156, the Secretary of State must consult both—
 - (a) OFCOM; and
 - (b) such other persons as he thinks fit.
- (3) Subsection (2) does not apply where the Secretary of State considers that the urgency of the case makes it inexpedient to carry out the consultation before making the order.
- (4) Subject to subsection (5), no order is to be made containing provision authorised by section 156 unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (5) Subsection (4) does not apply where the Secretary of State considers either—
 - (a) before or in the course of the consultation required by subsection (2); or
 - (b) after the consultation and before or after a draft of the order has been laid before Parliament,that the urgency of the case is or has become such that he should make the order straight away.
- (6) Where under subsection (5) the Secretary of State makes an order containing a direction under section 156 without a draft of the order having been approved, the order shall cease to have effect at the end of the period of forty days beginning with the day on which it was made unless, before the end of that period, it has been approved by a resolution of each House of Parliament.
- (7) For the purposes of subsection (6)—
 - (a) the order's ceasing to have effect is without prejudice to anything previously done, or to the making of a new order; and
 - (b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Reservation of spectrum for multiplex use

158 Special duty in relation to television multiplexes

- (1) This section applies where OFCOM, in exercise of their functions under the enactments relating to the management of the radio spectrum, have reserved frequencies for the broadcasting of television programmes.
- (2) It shall be the duty of OFCOM, in the carrying out of their functions under those enactments, to exercise their powers so as to secure, so far as practicable, that the requirement of subsection (3) is satisfied.
- (3) That requirement is that sufficient capacity is made available on the reserved frequencies for ensuring, in the case of every licensed television multiplex service, that the qualifying services are broadcast by means of that multiplex service.

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- (4) In subsection (3) “licensed television multiplex service” means a television multiplex service the provision of which is authorised by a licence under Part 1 of the 1996 Act.
- (5) In this section “qualifying service” and “television multiplex service” each has the same meaning as in Part 3 of this Act.

Recognised spectrum access

159 Grant of recognised spectrum access

- (1) This section applies where—
 - (a) a person is proposing to use or to continue to use a station or apparatus for wireless telegraphy;
 - (b) the circumstances of the use are circumstances specified for the purposes of this section in regulations made by OFCOM;
 - (c) that use does not require a wireless telegraphy licence but will involve the emission of electro-magnetic energy with a view to the reception of anything at places in the United Kingdom or in the territorial waters adjacent to the United Kingdom;

and for the purposes of this section it is immaterial whether the emissions are from a place within the United Kingdom or from a place outside the United Kingdom.
- (2) On an application by that person, OFCOM may make a grant of recognised spectrum access in respect of any use by him of anything for wireless telegraphy that is specified in the grant.
- (3) A grant of recognised spectrum access made to a person shall set out, by reference to such factors as OFCOM think fit (including, so far as they think fit, frequencies, times and places of reception and strength and type of signal), the respects in which the use of anything by that person for wireless telegraphy is recognised by the grant.
- (4) A grant of recognised spectrum access to a person is made by giving him a notification containing the grant.
- (5) A grant of recognised spectrum access may be made subject to such restrictions and conditions as OFCOM think fit, including, in particular, restrictions or conditions as to strength or type of signal, as to times of use and as to the sharing of frequencies.
- (6) The restrictions and conditions of a grant of recognised spectrum access made to a person must not duplicate obligations already imposed on him by general conditions set under section 45.
- (7) Where a grant of recognised spectrum access is made subject to restrictions and conditions, the restrictions and conditions must be set out in the notification by which the grant is made.
- (8) Schedule 5 (which makes provision about the grant, revocation and modification of recognised spectrum access) shall have effect.
- (9) Section 403 applies to the power of OFCOM to make regulations under subsection (1).
- (10) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act.

160 Effect of grant of recognised spectrum access

- (1) This section applies to the following functions of OFCOM—
- (a) their functions under section 1 of the Wireless Telegraphy Act 1949 (c. 54) (licensing of the use of the radio spectrum) with respect to the granting of wireless telegraphy licences;
 - (b) their functions under section 159 of this Act with respect to the making of grants of recognised spectrum access; and
 - (c) any of their other functions under the enactments relating to the management of the radio spectrum in the carrying out of which it is appropriate for them to have regard to—
 - (i) whether wireless telegraphy licences are in force; or
 - (ii) the terms, provisions or limitations of wireless telegraphy licences that are for the time being in force.
- (2) In carrying out the functions to which this section applies it shall be the duty of OFCOM to take into account—
- (a) the existence of any grant of recognised spectrum access that is for the time being in force, and
 - (b) the provisions imposing the restrictions and conditions subject to which the grant has effect,
- to the same extent as they would take into account a wireless telegraphy licence with terms, provisions or limitations making equivalent provision.

161 Charges in respect of grants of recognised spectrum access

- (1) The Wireless Telegraphy Act 1998 (c. 6) (which makes provision about the sums that may be charged in respect of the issue and renewal of wireless telegraphy licences etc.) shall be amended as follows.
- (2) In section 1 (charges for wireless telegraphy licences)—
- (a) in subsection (1), after “this Act” there shall be inserted—
 - “(a) references to a grant of recognised spectrum access are references to a grant made under section 159 of the Communications Act 2003 (recognised spectrum access); and
 - (b)”;
 - (b) in subsection (2), for the words from “or renewal”, where they first occur, to “is issued” there shall be substituted “of a wireless telegraphy licence or the making of a grant of recognised spectrum access and, where regulations under this section so provide, subsequently at such times during the term of the licence or grant and such times in respect of its variation, modification or revocation, as may be prescribed by the regulations, there shall be paid to OFCOM by the person to whom the licence is issued or the grant made”; and
 - (c) in subsection (4), for the words from “or renewal”, where they first occur, to “the licence” there shall be substituted “of a licence or the making of a grant of recognised spectrum access, OFCOM may, on the issue of the licence or the making of the grant,”.
- (3) After section 3 of that Act there shall be inserted the following section—

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

“3A Bidding for grants of recognised spectrum access

- (1) Having regard to the desirability of promoting the optimal use of the electromagnetic spectrum, OFCOM may by regulations provide that, in such cases as may be specified in the regulations, applications for grants of recognised spectrum access must be made in accordance with a procedure which involves the making by the applicant of a bid specifying an amount which he is willing to pay to OFCOM in respect of the grant.
- (2) Regulations under this section may make provision with respect to the grants to which they apply and the restrictions and conditions subject to which such grants are made.
- (3) The regulations may, in particular—
 - (a) require the applicant’s bid to specify the amount which he is willing to pay;
 - (b) require that amount to be expressed—
 - (i) as a cash sum;
 - (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the use of wireless telegraphy to which the grant relates);
 - (iii) as a combination of the two; or
 - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
 - (c) require that amount to be expressed in terms of—
 - (i) the making of a single payment;
 - (ii) the making of periodic payments;
 - (iii) a combination of the two; or
 - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
 - (d) specify requirements (such as, for example, technical or financial requirements, requirements relating to the use of wireless telegraphy to which the grant relates and requirements intended to restrict the holding of two or more grants of recognised spectrum access by any one person) which must be met by applicants for a grant;
 - (e) require any such applicant to pay a deposit to OFCOM;
 - (f) specify circumstances in which such a deposit is, or is not, to be refundable;
 - (g) specify matters to be taken into account by OFCOM (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to make a grant of recognised spectrum access;
 - (h) specify the other restrictions and conditions subject to which a grant to which the regulations apply is to be made; and
 - (i) make any provision referred to in section 1(3).
- (4) Regulations under this section are not to be construed as binding OFCOM to make a grant on the completion of the procedure provided for in the

regulations except in such circumstances as may be provided for in the regulations.

- (5) A grant of recognised spectrum access made in accordance with regulations under this section shall specify either—
- (a) the sum or sums which in consequence of the bids made are, in accordance with the regulations, to be payable in respect of the grant; or
 - (b) the method for determining that sum or those sums;
- and that sum or those sums shall be paid to OFCOM by the person to whom the grant is made in accordance with the conditions of the grant.
- (6) In determining the sum or sums payable in respect of a grant, regard may be had to bids made for other grants of recognised spectrum access and for wireless telegraphy licences.
- (7) Regulations under this section may provide that where a person—
- (a) makes an application for a grant of recognised spectrum access in accordance with a procedure provided for by such regulations, but
 - (b) subsequently refuses the grant applied for,
- that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the grant.
- (8) Subsection (4) of section 1 is to apply in relation to sums that will or may become payable under regulations under this section subsequently to the making of a grant of recognised spectrum access as it applies to sums that will or may become payable under regulations under that section.”

162 Conversion into and from wireless telegraphy licences

- (1) OFCOM may by regulations make provision for—
- (a) the conversion, on the application of the licence holder, of a wireless telegraphy licence into a grant of recognised spectrum access; and
 - (b) the conversion, on the application of the holder of the grant, of a grant of recognised spectrum access into a wireless telegraphy licence.
- (2) Section 403 applies to the power of OFCOM to make regulations under this section.

Crown use of the radio spectrum

163 Payments for use of radio spectrum by the Crown

- (1) The Secretary of State may, out of money provided by Parliament, make payments to OFCOM of such amounts as he considers appropriate in respect of—
- (a) the establishment and use by or on behalf of the Crown, of a station for wireless telegraphy;
 - (b) the installation and use by or on behalf of the Crown, of apparatus for wireless telegraphy;
 - (c) any grant of recognised spectrum access made to the Crown.

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

- (2) The payments made under this section shall be made at such times and, so far as made in relation to use, in relation to such periods as the Secretary of State considers appropriate.
- (3) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act.

Limitations and exemptions applied to spectrum use

164 Limitations on authorised spectrum use

- (1) If they consider it appropriate, for the purpose of securing the efficient use of the electro-magnetic spectrum, to impose limitations on the use of particular frequencies, OFCOM must make an order imposing the limitations.
- (2) An order under this section may do one or both of the following—
 - (a) specify frequencies for the use of which OFCOM will grant or make only a limited number of wireless telegraphy licences and grants of recognised spectrum access; or
 - (b) specify uses for which, on specified frequencies, OFCOM will grant or make only a limited number of wireless telegraphy licences and grants of recognised spectrum access.
- (3) Where OFCOM make an order under this section, it must set out the criteria which OFCOM will apply in determining in accordance with the order—
 - (a) the limit on the number of wireless telegraphy licences and grants of recognised spectrum access to be granted or made for the specified frequencies or uses;
 - (b) the persons to whom licences will be granted or grants of spectrum access made.
- (4) OFCOM must satisfy themselves that any criteria set out by virtue of subsection (3) are—
 - (a) objectively justifiable in relation to the frequencies or uses to which they relate;
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (c) proportionate to what they are intended to achieve; and
 - (d) in relation to what they are intended to achieve, transparent.
- (5) It shall be the duty of OFCOM to exercise the following powers in accordance with the orders for the time being in force under this section—
 - (a) their powers under the Wireless Telegraphy Act 1949 and the Wireless Telegraphy Act 1998 (c. 6) with respect to wireless telegraphy licences; and
 - (b) their powers under the Wireless Telegraphy Act 1998 and this Chapter with respect to grants of recognised spectrum access.
- (6) OFCOM must keep under review any order for the time being in force under this section.

- (7) It shall be the duty of OFCOM to make an order revoking or amending the provisions of an order under this section if, on reviewing it, they consider it necessary to do so for the purpose of securing the efficient use of the electro-magnetic spectrum.
- (8) An order under this section may make provision by reference to determinations which—
 - (a) are made from time to time by OFCOM in accordance with the provisions of such an order; and
 - (b) are published by them from time to time in such manner as may be provided for in such an order.
- (9) Section 403 applies to the power of OFCOM to make an order under this section.

165 Terms etc. of wireless telegraphy licences

In section 1 of the Wireless Telegraphy Act 1949 (c. 54), after subsection (2) (terms, provisions and limitations of the licence) there shall be inserted—

“(2A) Those terms, provisions and limitations may also include, in particular—

- (a) terms, provisions and limitations as to strength or type of signal, as to times of use and as to the sharing of frequencies;
- (b) terms, provisions or limitations imposing prohibitions on the transmission or broadcasting of particular matters by the holder of the licence; and
- (c) terms or provisions requiring the transmission or broadcasting of particular matters by that person.

(2B) A licence under this section may be granted either—

- (a) in relation to a particular station or particular apparatus; or
- (b) in relation to any station or apparatus falling within a description specified in the licence;

and such a description may be expressed by reference to such factors (including factors confined to the manner in which it is established, installed or used) as OFCOM think fit.

(2C) The terms, provisions and limitations of a licence granted under this section to a person must not duplicate obligations already imposed on him by general conditions set under section 45 of the Communications Act 2003.”

166 Exemption from need for wireless telegraphy licence

After section 1 of the Wireless Telegraphy Act 1949 there shall be inserted—

“1AA Exemption from need for wireless telegraphy licence

- (1) If OFCOM are satisfied that the condition in subsection (2) is satisfied as respects the use of stations or apparatus of any particular description, they shall make regulations under section 1 of this Act exempting the establishment, installation and use of any station or apparatus of that description from the prohibition in that section.

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

- (2) That condition is that the use of stations or apparatus of that description is not likely to involve any undue interference with wireless telegraphy.”

Award and transfer of licences

167 Bidding for wireless telegraphy licences

- (1) Section 3 of the Wireless Telegraphy Act 1998 (c. 6) (bidding for wireless telegraphy licences) shall be amended as follows.
- (2) The following shall cease to have effect—
- (a) in subsection (1), the words “or determined by him under” and paragraph (a) (requirement to set out procedure for bidding in a notice issued under regulations); and
 - (b) subsection (2) (matters to be included in regulations).
- (3) In subsection (3) (provision that may be contained in regulations)—
- (a) for paragraph (a) there shall be substituted—
 - “(a) require the applicant’s bid to specify the amount he is willing to pay;
 - (aa) require that amount to be expressed—
 - (i) as a cash sum;
 - (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the holding of the licence);
 - (iii) as a combination of the two; or
 - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
 - (ab) require that amount to be expressed in terms of—
 - (i) the making of a single payment;
 - (ii) the making of periodic payments;
 - (iii) a combination of the two; or
 - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;”
 - (b) in paragraph (f), for “any licence” there shall be substituted “a licence to which the regulations apply”; and
 - (c) the word “and” shall be inserted at the end of paragraph (f) and paragraph (h) shall cease to have effect.
- (4) For subsection (4) (notice not to create binding obligation to grant licence) there shall be substituted—
- “(4) Regulations under this section are not to be construed as binding OFCOM to grant a licence on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.”

(5) For subsection (5) (licence to specify the amount payable in accordance with the applicant's bid) there shall be substituted—

“(5) A wireless telegraphy licence granted in accordance with regulations under this section shall specify either—

- (a) the sum or sums which in consequence of the bids made are, in accordance with the regulations, to be payable in respect of the licence; or
- (b) the method for determining that sum or those sums;

and that sum or those sums shall be paid to OFCOM by the person to whom the licence is granted in accordance with the terms of the licence.”

(6) For subsection (6) there shall be substituted—

“(5A) In determining the sum or sums payable in respect of a wireless telegraphy licence, regard may be had to bids made for other wireless telegraphy licences and for grants of recognised spectrum access.

(5B) Regulations under this section may provide that where a person—

- (a) makes an application for a licence in accordance with a procedure provided for by such regulations, but
- (b) subsequently refuses the licence applied for,

that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the licence.

(6) Subsection (4) of section 1 is to apply in relation to sums that will or may become payable under regulations under this section subsequently to the grant of a wireless telegraphy licence as it applies to sums that will or may become payable under regulations under that section.”

168 Spectrum trading

(1) OFCOM may by regulations authorise the transfer to another person by—

- (a) the holder of a wireless telegraphy licence, or
- (b) the holder of a grant of recognised spectrum access,

of rights and obligations arising by virtue of such a licence or grant.

(2) The transfers that may be authorised by regulations under this section are—

- (a) such transfers of all or any of the rights and obligations under a licence or grant as have the effect that the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer;
- (b) such transfers of all or any those rights and obligations as have the effect that the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer; and
- (c) transfers falling within either of the preceding paragraphs under which the rights and obligations that are acquired by the transferee take effect—
 - (i) if they are rights and obligations under a wireless telegraphy licence, as rights and obligations under a grant of recognised spectrum access; and

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

- (ii) if they are rights and obligations under such a grant, as rights and obligations under a wireless telegraphy licence.
- (3) Regulations authorising the transfer of rights and obligations under a wireless telegraphy licence or grant of recognised spectrum access may—
- (a) authorise a partial transfer to be made by reference to such factors and apportionments, and to have effect in relation to such matters and periods, as may be described in the regulations, or as may be determined in accordance with them;
 - (b) by reference to such factors (including the terms and conditions of the licence or grant in question) as may be specified in or determined in accordance with the regulations, restrict the circumstances in which, the extent to which and the manner in which a transfer may be made;
 - (c) require the approval or consent of OFCOM for the making of a transfer;
 - (d) provide for a transfer to be effected by the surrender of a licence or grant of recognised spectrum access and the grant or making of a new one in respect of the transfer;
 - (e) confer power on OFCOM to direct that a transfer must not be made, or is to be made only after compliance with such conditions as OFCOM may impose in accordance with the regulations;
 - (f) authorise OFCOM to require the payment to them of such sums as may be determined by or in accordance with the regulations in respect of determinations made by OFCOM for the purposes of the regulations or in respect of an approval or consent given for those purposes;
 - (g) make provision for the giving of security (whether by the giving of deposits or otherwise) in respect of sums payable in pursuance of any regulations under this section;
 - (h) make provision as to the circumstances in which security given under such regulations is to be returned or may be retained;
 - (i) impose requirements as to the procedure to be followed for the making of a transfer and, in particular, as to the notification about a transfer that must be given to OFCOM, or must be published, both in advance of its being made and afterwards;
 - (j) impose requirements as to the records to be kept in connection with any transfer, and as to the persons to whom such records are to be made available;
 - (k) set out the matters to be taken into account in the making of determinations under regulations under this section.
- (4) The transfer of rights and obligations under a wireless telegraphy licence or grant of recognised spectrum access shall be void except to the extent that it is made—
- (a) in accordance with regulations under this section; or
 - (b) in accordance with a provision specified in subsection (5).
- (5) That provision is a provision which—
- (a) is contained in a wireless telegraphy licence granted before the commencement of this section or in the first or any subsequent renewal after the commencement of this section of a licence so granted; and
 - (b) allows the holder of the licence to confer the benefit of the licence on another in respect of any station or apparatus to which the licence relates.

(6) A transfer shall also be void if it is made in contravention of a direction given by OFCOM in exercise of a power conferred by regulations under this section.

(7) Section 403 applies to the power of OFCOM to make regulations under this section.

Variation and revocation of licences

169 Variation and revocation of wireless telegraphy licences

(1) For section 1E of the Wireless Telegraphy Act 1949 (c. 54) (variation and revocation of licences for the provision of a telecommunication service) there shall be substituted—

“1E Variation or revocation of a licence

(1) Where OFCOM propose to vary or revoke a wireless telegraphy licence, they shall give the person holding the licence a notification under this subsection—

- (a) stating the reasons for the proposed variation or revocation; and
- (b) specifying the period during which the person notified has an opportunity to do the things specified in subsection (2).

(2) Those things are—

- (a) making representations about the proposal; and
- (b) if the proposal is the result of a contravention of a term, provision or limitation of the licence, complying with that term, provision or limitation.

(3) Subject to subsections (4) to (6), 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.

(4) 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.

(5) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.

(6) The person notified shall also have a shorter period if—

- (a) OFCOM have reasonable grounds for believing that the case is a case of serious and repeated contravention or an urgent case;
- (b) they have determined that, in the circumstances, a shorter period would be appropriate; and
- (c) the shorter period has been specified in the notification.

(7) A case is an urgent case if the failure to vary or revoke the licence will result in, or create an immediate risk of—

- (a) a serious threat to the safety of the public, to public health or to national security; or
- (b) serious economic or operational problems for persons, other than the person in contravention, who—

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

- (i) use stations or apparatus for wireless telegraphy; or
 - (ii) are communications providers or make associated facilities available.
- (8) Subsection (1) does not apply to a proposal to vary or revoke a licence if the proposal is made at the request or with the consent of the licence holder.
- (9) For the purposes of this section a contravention of a term, provision or limitation of a licence is a repeated contravention, in relation to a proposal to vary or revoke a licence, if it falls within subsection (10).
- (10) A contravention falls within this subsection if—
- (a) a previous notification under subsection (1) has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence; and
 - (b) the subsequent notification under that subsection is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of subsection (11) that the contravention to which the previous notification related did occur.
- (11) Where OFCOM have given a notification under subsection (1), they shall, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification—
- (a) decide whether or not to vary or revoke the licence in accordance with their proposal, or in accordance with that proposal but with modifications; and
 - (b) give the person holding the licence a notification of their decision.
- (12) The notification under subsection (11)—
- (a) must be given no more than one week after the making of the decision to which it relates; and
 - (b) must, in accordance with that decision, either vary or revoke the licence or withdraw the proposal for a variation or revocation.
- (13) The reference in subsection (10) to a contravention of a term, provision or limitation of the same licence includes a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.
- (14) In this section, “communications provider” and “associated facility” have the same meaning as in the Communications Act 2003.”
- (2) Nothing in this section is to apply in any case in which a notice under section 1E(1) of the Wireless Telegraphy Act 1949 (c. 54) was served before the commencement of this section.

Wireless telegraphy register

170 Wireless telegraphy register

- (1) OFCOM may by regulations make provision for the establishment and maintenance of a register of relevant information.

- (2) OFCOM are to include relevant information in the register if, and only if, it is relevant information of a description prescribed by regulations under this section.
- (3) Information is relevant information for the purposes of subsection (1) if it relates to—
 - (a) the issue, renewal, transfer, variation or revocation of wireless telegraphy licences; or
 - (b) the making, renewal, transfer, modification or revocation of grants of recognised spectrum access.
- (4) Subject to such conditions (including conditions as to payment) as may be prescribed by regulations under this section, a register established by virtue of subsection (1) shall be open to inspection by the public.
- (5) Section 403 applies to the power of OFCOM to make regulations under this section.

Information requirements

171 Information requirements in relation to wireless telegraphy licences

- (1) In Part 3 of the Wireless Telegraphy Act 1949 (c. 54) (supplemental provisions), before section 14 there shall be inserted—

“13A Information requirements

- (1) Subject to the following provisions of this section, OFCOM may require a person who is using or has established, installed or used a station or apparatus for wireless telegraphy to provide OFCOM with all such information relating to—
 - (a) the establishment, installation or use of the station or apparatus, and
 - (b) any related matters,as OFCOM may require for statistical purposes.
- (2) OFCOM are not to require the provision of information under this section except—
 - (a) by a demand for the information that sets out OFCOM’s reasons for requiring the information and the statistical purposes for which it is required; and
 - (b) where the making of a demand for that information is proportionate to the use to which the information is to be put in the carrying out of OFCOM’s functions.
- (3) A demand for information required under this section must be contained in the notice served on the person from whom the information is required.
- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) A person who fails to provide information in accordance with a requirement of OFCOM under this section is guilty of an offence.
- (6) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show—

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

- (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
 - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (7) A person is guilty of an offence if—
- (a) in pursuance of any requirement under this section, he provides information that is false in any material particular; and
 - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.

13B Statement of policy on information gathering

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to—
 - (a) the exercise of their powers under section 13A; and
 - (b) the uses to which they are proposing to put information obtained under that section.
 - (2) OFCOM may from time to time revise that statement as they think fit.
 - (3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
 - (4) It shall be the duty of OFCOM, in exercising the powers conferred on them by section 13A, to have regard to the statement for the time being in force under this section.”
- (2) In section 14(1A) of that Act (summary offences carrying a maximum fine of level 3 on the standard scale), before paragraph (f) there shall be inserted—
- “(ea) any offence under section 13A(1) of this Act; or”.

Criminal proceedings etc.

172 Contraventions of conditions for use of wireless telegraphy

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened—
 - (a) a term, provision or limitation of a wireless telegraphy licence, or
 - (b) a term, provision or limitation of an exemption under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) (exemptions from licensing requirement),
 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 term, provision or limitation, and the 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).

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

- (3) Those things are—
 - (a) making representations about the matters notified; and
 - (b) complying with any notified term, provision or limitation of which he remains in contravention.
- (4) Subject to subsections (5) to (7), 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.
- (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 case is a case of 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.

173 Meaning of “repeated contravention” in s. 172

- (1) For the purposes of section 172 a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if—
 - (a) in the case of a contravention of a term, provision or limitation of a licence, it falls within subsection (2) or (3); or
 - (b) in the case of a contravention of a term, provision or limitation of an exemption, it falls within subsection (4) or (5).
- (2) A contravention of a term, provision or limitation of a licence falls within this subsection if—
 - (a) a previous notification under section 172 has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence;
 - (b) the person who was given that notification subsequently took steps for remedying the notified contravention; and
 - (c) the subsequent notification is given no more than twelve months after the day of the giving of the previous notification.
- (3) A contravention of a term, provision or limitation of a licence falls within this subsection if—
 - (a) the person concerned has been convicted of an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) in respect of the contravention to which the notification relates or in respect of another contravention of a term, provision or limitation of the same licence; and
 - (b) the subsequent notification is given before the end of the period of twelve months from the contravention in respect of which that person was convicted of that offence.

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

- (4) A contravention of a term, provision or limitation of an exemption falls within this subsection if—
- (a) a previous notification under section 172 has been given in respect of the same contravention or in respect of another contravention of the same term, provision or limitation;
 - (b) the person who was given that notification subsequently took steps for remedying the notified contravention; and
 - (c) the subsequent notification is given no more than twelve months after the day of the giving of the previous notification.
- (5) A contravention of a term, provision or limitation of an exemption falls within this subsection if—
- (a) the person concerned has been convicted of an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) in respect of the contravention to which the notification relates or in respect of another contravention of the same term, provision or limitation; and
 - (b) the subsequent notification is given before the end of the period of twelve months from the contravention in respect of which that person was convicted of that offence.
- (6) In calculating the periods of twelve months mentioned in subsections (3)(b) and (5)(b), the period between the institution of the criminal proceedings which led to the conviction and the conclusion of those proceedings shall be left out of account.
- (7) For the purposes of subsection (6) criminal proceedings shall be taken to be concluded when no further appeal against conviction may be brought without the permission of the court and—
- (a) in a case where there is no fixed period within which that permission can be sought, permission has been refused or has not been sought; or
 - (b) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.
- (8) References in this section to remedying a contravention include references to each of the following—
- (a) doing any thing the failure to do which, or the failure to do which within a particular period or before a particular time, constituted the whole or a part of the contravention;
 - (b) paying an amount to a person by way of compensation for loss or damage suffered by that person in consequence of the contravention;
 - (c) paying an amount to a person by way of compensation in respect of annoyance, inconvenience or anxiety to which he has been put in consequence of the contravention; and
 - (d) otherwise acting in a manner that constitutes an acknowledgement that the notified contravention did occur.
- (9) References in this section to a contravention of a term, provision or limitation of a licence include a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.

174 Procedure for prosecutions of wireless telegraphy offences

- (1) This section applies to proceedings against a person (“the defendant”) for an offence under section 1 of the Wireless Telegraphy Act 1949 consisting in the contravention of—
 - (a) the terms, provisions or limitations of a wireless telegraphy licence; or
 - (b) the terms, provisions or limitations of an exemption under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) (exemptions from licensing requirement).
- (2) Proceedings to which this section applies are not to be brought at any time after the coming into force of this section unless, before they are brought, OFCOM have—
 - (a) given the defendant a notification under section 172 in respect of the contravention to which the proceedings relate; and
 - (b) considered any representations about the matters notified which were made by the defendant within the period allowed under that section.
- (3) Proceedings to which this section applies are not to be brought at any time after the coming into force of this section in respect of a contravention if—
 - (a) it is a contravention to which a notification given to that person under section 172 relates; and
 - (b) that person has, during the period allowed under that section, complied with the notified term, provision or limitation.
- (4) Subsection (2) does not apply where OFCOM have certified that it would be inappropriate to follow the procedure in section 172 because of an immediate risk of—
 - (a) a serious threat to the safety of the public, to public health or to national security; or
 - (b) serious economic or operational problems for persons (other than the defendant) who—
 - (i) use stations or apparatus for wireless telegraphy; or
 - (ii) are communications providers or make associated facilities available.
- (5) Where—
 - (a) proceedings to which this section applies are brought by virtue of subsection (4) without a notification having been given to the defendant, and
 - (b) the defendant is convicted in those proceedings of the offence under section 1 of the Wireless Telegraphy Act 1949,the court, in determining how to deal with that person, shall have regard, in particular, to the matters specified in subsection (6).
- (6) Those matters are—
 - (a) whether the defendant has ceased to be in contravention of the terms, provisions or limitations in question and (if so) when; and
 - (b) any steps taken by the defendant (whether before or after the commencement of the proceedings) for securing compliance with the obligations imposed on him by virtue of those terms, provisions or limitations.
- (7) Notwithstanding anything in section 127 of the Magistrates' Courts Act 1980 (c. 43) or Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (limitation on time for bringing summary proceedings) where—

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- (a) OFCOM give a notification under section 172 in respect of a contravention, and
- (b) that notification is given before the end of six months after the day of the contravention,

the time for the bringing of proceedings for a summary offence in respect of that contravention shall be extended until the end of six months from the end of the period allowed, in the case of that notification, for doing the things mentioned in section 172(3) of this Act.

- (8) In this section, “stations for wireless telegraphy” and “apparatus for wireless telegraphy” have the same meanings as in the Wireless Telegraphy Act 1949 (c. 54).

175 Special procedure for contraventions by multiplex licence holders

- (1) OFCOM may impose a penalty on a person if—
 - (a) that person is or has been in contravention in any respect of the terms, provisions or limitations of a general multiplex licence;
 - (b) the contravention relates to terms, provisions or limitations falling within section 1(2A)(b) or (c) of the Wireless Telegraphy Act 1949 (terms, provisions and limitations about service content);
 - (c) OFCOM have notified that person that it appears to them that those terms, provisions or limitations have been contravened in that respect; and
 - (d) that contravention is not one in respect of which proceedings for an offence under that Act have been brought against that person.
- (2) Where OFCOM impose a penalty on a person under this section, they shall—
 - (a) 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.
- (3) 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.
- (4) No proceedings for an offence under the Wireless Telegraphy Act 1949 shall be commenced against a person in respect of a contravention in respect of which a penalty has been imposed by OFCOM under this section.
- (5) For the purposes of this section a licence is a general multiplex licence, in relation to the time of a contravention, if—
 - (a) it is a wireless telegraphy licence containing terms, provisions or limitations by virtue of which the services for the purposes of which the use of the licensed station or apparatus is authorised are confined to, or are allowed to include, one or more multiplex services; and
 - (b) at that time, there is no licence under Part 1 or 2 of the 1996 Act in force in respect of a multiplex service to be broadcast using that station or apparatus.
- (6) In this section “multiplex service” means—
 - (a) a service for broadcasting for general reception that consists in the packaging together of two or more services that are provided for inclusion together in that service by a combination of the relevant information in digital form; or

- (b) a service provided with a view to its being a service falling within paragraph (a) but in the case of which only one service is for the time being comprised in digital form in what is provided.

176 Amount of penalty under s. 175

- (1) The amount of a penalty imposed under section 175 is to be such amount, not exceeding the greater of the following, as OFCOM think fit, namely—
 - (a) £250,000; and
 - (b) 5 per cent. of the relevant amount of gross revenue.
- (2) In subsection (1) “the relevant amount of gross revenue” means the amount specified in section 177.
- (3) The Secretary of State may by order amend this section so as to substitute a different amount for the amount for the time being specified in subsection (1)(a).
- (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.

177 “Relevant amount of gross revenue” for the purposes of s. 176

- (1) The relevant amount of gross revenue for the purposes of section 176, in relation to a penalty imposed on a person, is—
 - (a) where the last accounting period of that person which falls before the contravention was a period of twelve months, the relevant part of his gross revenue for that period; and
 - (b) in any other case, the amount which, by making any appropriate apportionments or other adjustments of the relevant part of his gross revenue for the accounting period or periods mentioned in subsection (2), is computed to be the amount representing the annual rate for the relevant part of his gross revenues.
- (2) The accounting period or periods referred to in subsection (1) are—
 - (a) every accounting period of his to end within the period of twelve months immediately preceding the contravention; and
 - (b) if there is no such accounting period, the accounting period of his which is current at the time of the contravention.
- (3) In this section, a reference to the relevant part of a person’s gross revenue, in relation to a contravention of the terms, provisions or limitations of a licence, is a reference to so much of his gross revenue as is attributable to the provision of the service to which that licence relates.
- (4) For the purposes of this section—
 - (a) the gross revenue of a person for a period, and
 - (b) the extent to which a part of a person’s gross revenue is attributable to the provision of any service,shall be ascertained in accordance with such principles as may be set out in a statement made by OFCOM.

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

- (5) Such a statement may provide for the amount of a person's gross revenue for an accounting period that is current when the amount falls to be calculated to be taken to be the amount estimated by OFCOM, in accordance with the principles set out in the statement, to be the amount that will be his gross revenue for that period.
- (6) OFCOM may revise a statement made under subsection (4) from time to time.
- (7) A statement made or revised under this section may set out different principles for different cases.
- (8) Before making or revising a statement under this section, OFCOM must consult the Secretary of State and the Treasury.
- (9) OFCOM must—
- (a) publish the statement made under subsection (4) and every revision of it; and
 - (b) send a copy of the statement and of every such revision to the Secretary of State;
- and the Secretary of State must lay copies of the statement and of every such revision before each House of Parliament.
- (10) Section 13A of the Wireless Telegraphy Act 1949 (c. 54) is to apply for the purpose of ascertaining the amount of a person's gross revenue for any period for the purposes of section 176 of this Act and this section as it applies for the purpose of obtaining information for statistical purposes about matters relating to the establishment, installation or use by that person of a station or apparatus.
- (11) In this section—
- “accounting period”, in relation to a person, means a period in respect of which accounts of the undertaking carried on by him are prepared or, if one such period is comprised in another, whichever of those periods is or is closest to a twelve month period; and
- “gross revenue”, in relation to a person, means the gross revenue of an undertaking carried on by that person.

178 Proceedings for an offence relating to apparatus use

- (1) Section 11 of the Wireless Telegraphy Act 1949 (notices enforcing regulations on the use of apparatus) shall have effect with the following amendments in relation to any notice under subsection (1) or (2) of that section that is served after the coming into force of this subsection—
- (a) paragraph (i) of the proviso to subsection (1) shall be omitted; and
 - (b) for subsections (3) to (6) there shall be substituted—
- “(2A) Where an appeal with respect to a notice under this section is pending—
- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
 - (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal;

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but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(2B) For the purposes of this section an appeal under section 192 of the Communications Act 2003 with respect to a notice under this section or a further appeal relating to the decision on such an appeal is pending unless—

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision on the appeal; or
- (b) no further appeal against a decision made on the appeal or on any such further appeal may be brought without the permission of the court and—
 - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
 - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

(2C) No proceedings for an offence of contravening a notice under this section may be commenced in Scotland—

- (a) until the time during which an appeal against such a notice may be brought has expired; or
- (b) where such an appeal has been brought, until that appeal has been determined.

(2D) Such proceedings in Scotland must be commenced within six months of—

- (a) where no appeal has been brought, the time referred to in paragraph (a) of subsection (2C); and
- (b) where an appeal has been brought and determined, the date of that determination.”

(2) Section 12 of that Act (enforcement of regulations as to sales of apparatus etc.) shall have effect in relation to any notices served under subsection (1) of that section after the coming into force of this section with the substitution of the following subsections for subsections (2) to (4)—

“(1A) Where an appeal with respect to a notice under subsection (1) of this section is pending—

- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
- (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal;

but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(1B) For the purposes of this section any appeal under section 192 of the Communications Act 2003 with respect to a notice under this section or a further appeal relating to the decision on that appeal is pending unless—

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

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision; or
- (b) no further appeal against any decision made on the appeal or on any such further appeal may be brought without the permission of the court and—
 - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
 - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

(1C) No proceedings for an offence of contravening a notice under this section may be commenced in Scotland—

- (a) until the time during which an appeal against such a notice may be brought has expired; or
- (b) where such an appeal has been brought, until that appeal has been determined.

(1D) Such proceedings in Scotland must be commenced within six months of—

- (a) where no appeal has been brought, the time referred to in paragraph (a) of subsection (1C); and
- (b) where an appeal has been brought and determined, the date of that determination.”

179 Modification of penalties for certain wireless telegraphy offences

(1) In subsection (1) of section 14 of the Wireless Telegraphy Act 1949 (c. 54) (either way offences), for paragraphs (aa) and (ab) there shall be substituted—

- “(aa) any offence under section 1(1) of this Act consisting in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41));
- (ab) any offence under section 1A of this Act where the relevant contravention of section 1 would constitute an offence falling within paragraph (aa);”.

(2) After subsection (1A), there shall be inserted—

“(1AA) A person committing—

- (a) an offence under section 1(1) of this Act other than—
 - (i) one which falls within subsection (1)(aa), or
 - (ii) one which falls within subsection (1A)(a), or
- (b) an offence under section 1A of this Act other than—
 - (i) one which falls within subsection (1)(ab), or
 - (ii) one which falls within subsection (1A)(aa),

shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”

(3) In section 79(1) of the Telecommunications Act 1984 (c. 12) (offences in respect of which apparatus may be seized), after paragraph (b) there shall be inserted—

“(bza) any offence under section 1A of that Act other than one where the relevant contravention of section 1 of that Act would constitute an offence so consisting;”.

(4) This section only applies in relation to offences committed after the commencement of this section.

180 Fixed penalties for certain wireless telegraphy offences

Schedule 6 (which makes provision as respects fixed penalty notices for summary offences under the Wireless Telegraphy Act 1949 (c. 54)) shall have effect.

181 Power of arrest

(1) In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (offences for which power of summary arrest available), after paragraph 2 there shall be inserted—

“Wireless Telegraphy Act 1949

2A An offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way).”

(2) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (offences for which power of summary arrest available), after paragraph (i) there shall be inserted—

“(j) an offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way);”.

182 Forfeiture etc. of restricted apparatus

(1) Apparatus to which this section applies shall be liable to forfeiture if, immediately before being seized, it was in a person’s custody or control in contravention of a prohibition imposed by an order under section 7 of the Wireless Telegraphy Act 1967 (c. 72) (restriction on dealings in and custody of certain apparatus).

(2) This section applies to apparatus if it has been seized—

- (a) in pursuance of a warrant granted under section 15(1) of the Wireless Telegraphy Act 1949; or
- (b) in the exercise of the power conferred by section 79(3) of the Telecommunications Act 1984 (c. 12).

(3) Apparatus forfeited under this section is to be forfeited to OFCOM and may be disposed of by them in any manner they think fit.

(4) Schedule 7 (which makes provision in relation to the seizure and forfeiture of apparatus) shall have effect.

(5) The preceding provisions of this section and Schedule 7 apply only in relation to apparatus seized after the commencement of this section.

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

- (6) Sections 80 and 81 of the Telecommunications Act 1984 (c. 12) (which make provision for forfeiture of apparatus) are not to apply in relation to apparatus seized after the commencement of this section.
- (7) In section 7(5) of the Wireless Telegraphy Act 1967 (c. 72), paragraph (b) (which allows a person to have custody or control of restricted apparatus when authorised otherwise than by the Secretary of State) shall cease to have effect.

Construction of 1949 Act

183 Modification of definition of “undue interference”

For subsection (5) of section 19 of the Wireless Telegraphy Act 1949 (c. 54) (meaning of undue interference) there shall be substituted—

“(5) Interference with any wireless telegraphy is not to be regarded as undue for the purposes of this Act unless it is also harmful.

(5A) For the purposes of this Act interference is harmful if—

- (a) it creates dangers, or risks of danger, in relation to the functioning of any service provided by means of wireless telegraphy for the purposes of navigation or otherwise for safety purposes; or
- (b) it degrades, obstructs or repeatedly interrupts anything which is being broadcast or otherwise transmitted—
 - (i) by means of wireless telegraphy; and
 - (ii) in accordance with a licence under this Act, regulations under the proviso to section 1(1) of this Act or a grant of recognised spectrum access under Chapter 2 of Part 2 of the Communications Act 2003 or otherwise lawfully.”

184 Modification of definition of “wireless telegraphy”

- (1) The Secretary of State may by order modify the definition of “wireless telegraphy” in section 19(1) of the Wireless Telegraphy Act 1949 by substituting a different frequency for the frequency (at the passing of this Act, 3,000 GHz) that is for the time being specified in that definition.
- (2) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

CHAPTER 3

DISPUTES AND APPEALS

Disputes

185 Reference of disputes to OFCOM

- (1) This section applies in the case of a dispute relating to the provision of network access if it is—

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

- (a) a dispute between different communications providers;
 - (b) a dispute between a communications provider and a person who makes associated facilities available;
 - (c) a dispute between different persons making such facilities available;
 - (d) a dispute relating to the subject-matter of a condition set under section 74(1) between a communications provider or person who makes associated facilities available and a person who (without being such a person) is a person to whom such a condition applies; or
 - (e) a dispute relating to the subject-matter of such a condition between different persons each of whom (without being a communications provider or a person who makes associated facilities available) is a person to whom such a condition applies.
- (2) This section also applies in the case of any other dispute if—
 - (a) it relates to rights or obligations conferred or imposed by or under this Part or any of the enactments relating to the management of the radio spectrum that are not contained in this Part;
 - (b) it is a dispute between different communications providers; and
 - (c) it is not an excluded dispute.
- (3) Any one or more of the parties to the dispute may refer it to OFCOM.
- (4) A reference made under this section is to be made in such manner as OFCOM may require.
- (5) The way in which a requirement under subsection (4)—
 - (a) is to be imposed, or
 - (b) may be withdrawn or modified,is by a notice published in such manner as OFCOM consider appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) Requirements imposed under subsection (4) may make different provision for different cases.
- (7) A dispute is an excluded dispute for the purposes of subsection (2) if it is about—
 - (a) obligations imposed on a communications provider by SMP apparatus conditions;
 - (b) contraventions of sections 125 to 127;
 - (c) obligations imposed on a communications provider by or under any of sections 128 to 131; or
 - (d) the operation in the case of a communications provider of section 134.
- (8) For the purposes of this section—
 - (a) the disputes that relate to the provision of network access include disputes as to the terms or conditions on which it is or may be provided in a particular case; and
 - (b) the disputes that relate to an obligation include disputes as to the terms or conditions on which any transaction is to be entered into for the purpose of complying with that obligation.

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

186 Action by OFCOM on dispute reference

- (1) This section applies where a dispute is referred to OFCOM under and in accordance with section 185.
- (2) OFCOM must decide whether or not it is appropriate for them to handle the dispute.
- (3) Unless they consider—
 - (a) that there are alternative means available for resolving the dispute,
 - (b) that a resolution of the dispute by those means would be consistent with the Community requirements set out in section 4, and
 - (c) that a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it,their decision must be a decision that it is appropriate for them to handle the dispute.
- (4) As soon as reasonably practicable after OFCOM have decided—
 - (a) that it is appropriate for them to handle the dispute, or
 - (b) that it is not,they must inform each of the parties to the dispute of their decision and of their reasons for it.
- (5) The notification must state the date of the decision.
- (6) Where—
 - (a) OFCOM decide that it is not appropriate for them to handle the dispute, but
 - (b) the dispute is not resolved by other means before the end of the four months after the day of OFCOM's decision,the dispute may be referred back to OFCOM by one or more of the parties to the dispute.

187 Legal proceedings about referred disputes

- (1) Where a dispute is referred or referred back to OFCOM under this Chapter, the reference is not to prevent—
 - (a) the person making it,
 - (b) another party to the dispute,
 - (c) OFCOM, or
 - (d) any other person,from bringing, or continuing, any legal proceedings with respect to any of the matters under dispute.
- (2) Nor is the reference or reference back to OFCOM under this Chapter of a dispute to prevent OFCOM from—
 - (a) giving a notification in respect of something that they have reasonable grounds for believing to be a contravention of any obligation imposed by or under any an enactment;
 - (b) exercising any of their other powers under any enactment in relation to a contravention of such an obligation; or
 - (c) taking any other step in preparation for or with a view to doing anything mentioned in the preceding paragraphs.

- (3) If, in any legal proceedings with respect to a matter to which a dispute relates, the court orders the handling of the dispute by OFCOM to be stayed or sisted—
 - (a) OFCOM are required to make a determination for resolving the dispute only if the stay or sist is lifted or expires; and
 - (b) the period during which the stay or sist is in force must be disregarded in determining the period within which OFCOM are required to make such a determination.
- (4) Subsection (1) is subject to section 190(8) and to any agreement to the contrary binding the parties to the dispute.
- (5) In this section “legal proceedings” means civil or criminal proceedings in or before a court.

188 Procedure for resolving disputes

- (1) This section applies where—
 - (a) OFCOM have decided under section 186(2) that it is appropriate for them to handle a dispute; or
 - (b) a dispute is referred back to OFCOM under section 186(6).
- (2) OFCOM must—
 - (a) consider the dispute; and
 - (b) make a determination for resolving it.
- (3) The procedure for the consideration and determination of the dispute is to be the procedure that OFCOM consider appropriate.
- (4) In the case of a dispute referred back to OFCOM under section 186(6), that procedure may involve allowing the continuation of a procedure that has already been begun for resolving the dispute by alternative means.
- (5) Except in exceptional circumstances and subject to section 187(3), OFCOM must make their determination no more than four months after the following day—
 - (a) in a case falling within subsection (1)(a), the day of the decision by OFCOM that it is appropriate for them to handle the dispute; and
 - (b) in a case falling within subsection (1)(b), the day on which the dispute is referred back to them.
- (6) Where it is practicable for OFCOM to make their determination before the end of the four month period, they must make it as soon in that period as practicable.
- (7) OFCOM must—
 - (a) send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute; and
 - (b) publish so much of their determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (8) The publication of information under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention, to the extent that they consider appropriate, of members of the public.

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

189 Disputes involving other member States

- (1) This section applies where it appears to OFCOM that a dispute referred or referred back to them under this Chapter relates partly to a matter falling within the jurisdiction of the regulatory authorities of another member State.
- (2) A dispute relates to matters falling within the jurisdiction of the regulatory authorities of another member State to the extent that—
 - (a) it relates to the carrying on of activities by one or both of the parties to the dispute in more than one member State or to activities carried on by different parties to the dispute in different member States; and
 - (b) the activities to which the dispute relates, so far as they are carried on in another member State, are carried on in the member State for which those authorities are the regulatory authorities.
- (3) For the purposes of subsection (2) the activities that are carried on in a member State include anything done by means of an electronic communications network, or part of such a network, which is situated in that member State.
- (4) Before taking any steps under this Chapter in relation to the reference or the dispute, OFCOM must consult the other regulatory authorities within whose jurisdiction the matter falls.
- (5) It shall be the duty of OFCOM to secure that steps taken in relation to the reference or dispute (whether taken by them or by the other regulatory authorities) are, so far as practicable, agreed between OFCOM and those authorities.
- (6) Accordingly, section 188 is to have effect in relation to the reference as if the period for making a determination which is specified in subsection (5) of that section were such period (if any) as may be agreed between—
 - (a) OFCOM; and
 - (b) the other regulatory authorities within whose jurisdiction the matter falls.

190 Resolution of referred disputes

- (1) Where OFCOM make a determination for resolving a dispute referred to them under this Chapter, their only powers are those conferred by this section.
- (2) Their main power (except in the case of a dispute relating to rights and obligations conferred or imposed by or under the enactments relating to the management of the radio spectrum) is to do one or more of the following—
 - (a) to make a declaration setting out the rights and obligations of the parties to the dispute;
 - (b) to give a direction fixing the terms or conditions of transactions between the parties to the dispute;
 - (c) to give a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM; and
 - (d) for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other, to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.

- (3) Their main power in the excepted case is just to make a declaration setting out the rights and obligations of the parties to the dispute.
- (4) Nothing in this section prevents OFCOM from exercising the following powers in consequence of their consideration under this Chapter of any dispute—
 - (a) their powers under Chapter 1 of this Part to set, modify or revoke general conditions, universal service conditions, access related conditions, privileged supplier conditions or SMP conditions;
 - (b) their powers to vary, modify or revoke wireless telegraphy licences or grants of recognised spectrum access;
 - (c) their power to make, amend or revoke regulations under section 1 or 3 of the Wireless Telegraphy Act 1949 (c. 54).
- (5) In the case of a dispute referred back to OFCOM under section 186(6)—
 - (a) OFCOM may, in making their determination, take account of decisions already made by others in the course of an attempt to resolve the dispute by alternative means; and
 - (b) the determination made by OFCOM may include provision ratifying decisions so made.
- (6) Where OFCOM make a determination for resolving a dispute, they may require a party to the dispute—
 - (a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to OFCOM, or in connection with it; and
 - (b) to make payments to OFCOM in respect of costs and expenses incurred by them in dealing with the dispute.
- (7) OFCOM are not, under subsection (6)(b), to require payments to be made to them by a party to the dispute except—
 - (a) in a case where the dispute relates to the rights and obligations of the parties to the dispute under the enactments relating to the management of the radio spectrum; or
 - (b) where it appears to OFCOM that the reference of the dispute by that party was frivolous or vexatious or that that party has otherwise abused the right of reference conferred by this Chapter.
- (8) A determination made by OFCOM for resolving a dispute referred or referred back to them under this Chapter binds all the parties to the dispute.
- (9) Subsection (8) is subject to section 192.

191 OFCOM's power to require information in connection with dispute

- (1) Where a dispute has been referred or referred back to OFCOM under this Chapter, they may require any person to whom subsection (2) applies to provide them with all such information as they may require for the purpose of—
 - (a) deciding whether it is appropriate for them to handle the dispute;
 - (b) determining whether it is necessary for them to consult the regulatory authorities of another member State; or
 - (c) considering the dispute and making a determination for resolving it.

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

- (2) This subsection applies to—
- (a) a party to the dispute; and
 - (b) a person who is not a party to the dispute but appears to OFCOM to have information that is relevant to the matters mentioned in subsection (1)(a) to (c).
- (3) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (4) In fixing the period within which information is to be provided in accordance with a requirement under this section OFCOM must have regard, in particular, to—
- (a) their obligation to make a determination for resolving the dispute within the period specified in section 188;
 - (b) the nature of the dispute; and
 - (c) the information that is required.
- (5) Sections 138 to 144 apply for the enforcement of a requirement under this section as they apply for the enforcement of requirements under section 135 or 136.
- (6) In its application for the enforcement of this section, section 138 is to have effect as if it allowed OFCOM to specify such period of less than one month for doing the things mentioned in subsection (3) of that section as they consider appropriate for the purpose of enabling them to comply with an obligation of theirs to make a determination within a particular period.

Appeals

192 Appeals against decisions by OFCOM, the Secretary of State etc.

- (1) This section applies to the following decisions—
- (a) a decision by OFCOM under this Part, the Wireless Telegraphy Act 1949 (c. 54) or the Wireless Telegraphy Act 1998 (c. 6) that is not a decision specified in Schedule 8;
 - (b) a decision (whether by OFCOM or another) to which effect is given by a direction, approval or consent given for the purposes of a provision of a condition set under section 45;
 - (c) a decision to which effect is given by the modification or withdrawal of such a direction, approval or consent;
 - (d) a decision by the Secretary of State to which effect is given by one of the following—
 - (i) a specific direction under section 5 that is not about the making of a decision specified in Schedule 8;
 - (ii) a restriction or condition set by regulations under section 109;
 - (iii) a direction to OFCOM under section 132;
 - (iv) a specific direction under section 156 that is not about the making of a decision specified in Schedule 8.
- (2) A person affected by a decision to which this section applies may appeal against it to the Tribunal.

- (3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) The notice of appeal must set out—
 - (a) the provision under which the decision appealed against was taken; and
 - (b) the grounds of appeal.
- (6) The grounds of appeal must be set out in sufficient detail to indicate—
 - (a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
 - (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM, by the Secretary of State or by another person.
- (7) In this section and Schedule 8 references to a decision under an enactment—
 - (a) include references to a decision that is given effect to by the exercise or performance of a power or duty conferred or imposed by or under an enactment; but
 - (b) include references to a failure to make a decision, and to a failure to exercise a power or to perform a duty, only where the failure constitutes a failure to grant an application or to comply with any other form of request to make the decision, to exercise the power or to perform the duty;and references in the following provisions of this Chapter to a decision appealed against are to be construed accordingly.
- (8) For the purposes of this section and the following provisions of this Chapter a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by or under an enactment shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed.

193 Reference of price control matters to the Competition Commission

- (1) Tribunal rules must provide in relation to appeals under section 192(2) relating to price control that the price control matters arising in that appeal, to the extent that they are matters of a description specified in the rules, must be referred by the Tribunal to the Competition Commission for determination.
- (2) Where a price control matter is referred in accordance with Tribunal rules to the Competition Commission for determination, the Commission is to determine that matter—
 - (a) in accordance with the provision made by the rules;
 - (b) in accordance with directions given to them by the Tribunal in exercise of powers conferred by the rules; and
 - (c) subject to the rules and any such directions, using such procedure as the Commission consider appropriate.
- (3) The provision that may be made by Tribunal rules about the determination of a price control matter referred to the Competition Commission in accordance with the rules includes provision about the period within which that matter is to be determined by that Commission.

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

- (4) Where the Competition Commission determines a price control matter in accordance with Tribunal rules, they must notify the Tribunal of the determination they have made.
- (5) The notification must be given as soon as practicable after the making of the notified determination.
- (6) Where a price control matter arising in an appeal is required to be referred to the Competition Commission under this section, the Tribunal, in deciding the appeal on the merits under section 195, must decide that matter in accordance with the determination of that Commission.
- (7) Subsection (6) does not apply to the extent that the Tribunal decides, applying the principles applicable on an application for judicial review, that the determination of the Competition Commission is a determination that would fall to be set aside on such an application.
- (8) Section 117 of the Enterprise Act 2002 (c. 40) (offences of supplying false or misleading information) shall have effect in relation to information supplied to the Competition Commission in connection with their functions under this section as it has effect in relation to information supplied to them in connection with their functions under Part 3 of that Act.
- (9) For the purposes of this section an appeal relates to price control if the matters to which the appeal relates are or include price control matters.
- (10) In this section “price control matter” means a matter relating to the imposition of any form of price control by an SMP condition the setting of which is authorised by—
 - (a) section 87(9);
 - (b) section 91; or
 - (c) section 93(3).

194 Composition of Competition Commission for price control references

- (1) The Secretary of State must appoint not less than three members of the Competition Commission for the purposes of references under section 193.
- (2) In selecting a group to perform the Commission’s functions in relation to a reference under section 193, the chairman of the Commission must select at least one, and not more than three, of the members appointed under this section to be members of the group.

195 Decisions of the Tribunal

- (1) The Tribunal shall dispose of an appeal under section 192(2) in accordance with this section.
- (2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal’s decision must include a decision as to what (if any) is the appropriate action for the decision-maker to take in relation to the subject-matter of the decision under appeal.

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

- (4) The Tribunal shall then remit the decision under appeal to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.
- (5) The Tribunal must not direct the decision-maker to take any action which he would not otherwise have power to take in relation to the decision under appeal.
- (6) It shall be the duty of the decision-maker to comply with every direction given under subsection (4).
- (7) In the case of an appeal against a decision given effect to by a restriction or condition set by regulations under section 109, the Tribunal must take only such steps for disposing of the appeal as it considers are not detrimental to good administration.
- (8) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (c. 40) (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if for the reference to the undertaking to which commercial information relates there were substituted a reference to any person to whom it relates.
- (9) In this section “the decision-maker” means—
 - (a) OFCOM or the Secretary of State, according to who took the decision appealed against; or
 - (b) in the case of an appeal against—
 - (i) a direction, approval or consent given by a person other than OFCOM or the Secretary of State, or
 - (ii) the modification or withdrawal by such a person of such a direction, approval or consent,that other person.

196 Appeals from the Tribunal

- (1) A decision of the Tribunal on an appeal under section 192(2) may itself be appealed.
- (2) An appeal under this section—
 - (a) lies to the Court of Appeal or to the Court of Session; and
 - (b) must relate only to a point of law arising from the decision of the Tribunal.
- (3) An appeal under this section may be brought by—
 - (a) a party to the proceedings before the Tribunal; or
 - (b) any other person who has a sufficient interest in the matter.
- (4) An appeal under this section requires the permission of the Tribunal or of the court to which it is to be made.
- (5) In this section references to a decision of the Tribunal include references to a direction given by it under section 195(4).

Interpretation of Chapter 3

197 Interpretation of Chapter 3

- (1) In this Chapter—

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

“network access” has the same meaning as in Chapter 1 of this Part;
“the Tribunal” means the Competition Appeal Tribunal; and
“Tribunal rules” means rules made under section 15 of the Enterprise Act 2002.

- (2) References in this Chapter, in relation to a dispute, to the regulatory authorities of other member States are references to such of the authorities of the other member States as have been notified under the Framework Directive to the European Commission as the regulatory authorities of those States for the purposes of the matters to which the dispute relates.
- (3) In this section “the Framework Directive” has the same meaning as in Chapter 1 of this Part.