

SCHEDULE

Section 1

FURTHER PROVISION ABOUT OFCOM

Qualification for membership of non-executive members

- 1 (1) Before appointing a person to be the chairman or another non-executive member of OFCOM, the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the carrying out by him of his functions as a member of OFCOM.
- (2) The Secretary of State shall also satisfy himself from time to time with respect to the chairman and every other non-executive member of OFCOM that that member has no such interest.
- (3) Every person who—
 - (a) is a person whom the Secretary of State proposes to appoint to be the chairman or another non-executive member of OFCOM, or
 - (b) is the chairman or another non-executive member of OFCOM,shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraphs (1) and (2).
- (4) For the purposes of this paragraph and paragraph 2 a person shall not be taken to have an interest that is likely to affect prejudicially the carrying out by him of his functions as a member of OFCOM by reason only that he is or has been—
 - (a) the Director General of Telecommunications;
 - (b) a member of another existing regulator;
 - (c) a member of the staff of any of the existing regulators; or
 - (d) a person engaged on the Secretary of State's behalf in any activities connected with the carrying out of the Secretary of State's functions relating to wireless telegraphy.

Tenure of office

- 2 (1) Subject to the following provisions of this paragraph, the chairman and every other non-executive member of OFCOM shall each hold and vacate office in accordance with the terms of his appointment.
- (2) A person's appointment to be the chairman or another non-executive member of OFCOM must state the period for which the appointment is made; but a person shall be eligible for re-appointment at the end of any such period.
- (3) The chairman and every other non-executive member of OFCOM may at any time resign his office by notice in writing to the Secretary of State.
- (4) If the Secretary of State is satisfied that the chairman or another non-executive member of OFCOM—
 - (a) is an undischarged bankrupt or has had his estate sequestrated without being discharged,
 - (b) has made an arrangement with his creditors, or has entered into a trust deed for creditors, or has made a composition contract with his creditors,

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- (c) has such a financial or other interest as is likely to affect prejudicially the carrying out by him of his functions as a member of OFCOM,
- (d) has been guilty of misbehaviour, or
- (e) is otherwise incapable of carrying out, or unfit to carry out, the functions of his office,

the Secretary of State may by notice in writing remove him from office.

Remuneration and pensions of non-executive members

- 3 (1) OFCOM may pay to the chairman and other non-executive members of OFCOM such remuneration and allowances as the Secretary of State may determine.
- (2) OFCOM may pay, or make provision for paying, to or in respect of the chairman and other non-executive members of OFCOM, such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where—
- (a) a person ceases, otherwise than on the expiry of his term of office, to be the chairman or to be a non-executive member other than the chairman, and
 - (b) it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation,
- OFCOM may make a payment to him of such amount as the Secretary of State may determine.
- (4) If any non-executive member of OFCOM—
- (a) is a participant in any pension scheme applicable to his membership of OFCOM, and
 - (b) on ceasing to be a non-executive member of OFCOM, becomes an employee of OFCOM or both such an employee and an executive member,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service (after ceasing to be a non-executive member of OFCOM) as an employee or executive member of OFCOM were service as a non-executive member of OFCOM.

Deputy chairman

- 4 (1) The Secretary of State may appoint any member of OFCOM who is a non-executive member to be the deputy chairman of OFCOM.
- (2) A person appointed to be the deputy chairman—
- (a) shall cease to be the deputy chairman if he ceases to be a member of OFCOM; but
 - (b) shall otherwise hold and vacate that office in accordance with the terms of his appointment.
- (3) The deputy chairman of OFCOM shall be entitled to carry out the functions of the chairman, in such cases and in such manner as may be determined by or in accordance with any directions given by the chairman or the Secretary of State.

Chief executive and other employees of OFCOM

- 5 (1) There shall be a chief executive of OFCOM.

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- (2) The chief executive shall be appointed by the chairman and other non-executive members of OFCOM with the approval of the Secretary of State.
- (3) OFCOM may appoint such other employees as they may determine and make such other arrangements for the staffing of OFCOM as they think fit.
- (4) Sub-paragraph (1) shall not apply in relation to any time before such date as the Secretary of State may notify to OFCOM as the date from which they are required to have a chief executive; and the membership of OFCOM shall not be required at any time before that date to include any executive member.

Terms and conditions of executive members of OFCOM

- 6 (1) The chief executive shall be appointed to hold his office, and the other executive members of OFCOM shall be appointed as executive members and employed by OFCOM, on such terms and conditions, including terms and conditions as to remuneration, as the chairman and other non-executive members may determine.
- (2) If the chairman and other non-executive members of OFCOM so determine in the case of any of the employees of OFCOM who are executive members, OFCOM shall—
 - (a) pay, to or in respect of those employees, such pensions, allowances or gratuities, or
 - (b) provide and maintain for them such pension schemes (whether contributory or not),as the chairman and the other non-executive members may determine.
- (3) If any employee of OFCOM who is an executive member—
 - (a) is a participant in any pension scheme applicable to his employment, and
 - (b) becomes a non-executive member of OFCOM,he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a non-executive member were service as an employee of OFCOM.
- (4) If any employee of OFCOM who is an executive member—
 - (a) is a participant in any pension scheme applicable to his membership of OFCOM, and
 - (b) ceases to be an executive member without ceasing to be an employee of OFCOM,he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service (after ceasing to be an executive member) as an employee of OFCOM were service as an executive member of OFCOM.

Other employees of OFCOM

- 7 (1) The employees of OFCOM who are not executive members shall be appointed to and hold their employments on such terms and conditions, including terms and conditions as to remuneration, as OFCOM may determine.
- (2) If OFCOM so determine in the case of any of the employees of OFCOM who are not executive members, OFCOM shall—

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- (a) pay to or in respect of those employees such pensions, allowances or gratuities, or
 - (b) provide and maintain for them such pension schemes (whether contributory or not),
- as OFCOM may determine.
- (3) If any employee of OFCOM—
- (a) is a participant in any pension scheme applicable to his employment, and
 - (b) becomes an executive member or a non-executive member of OFCOM,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of OFCOM were service as an employee of OFCOM.

Finances of OFCOM

- 8 (1) It shall be the duty of OFCOM (subject to any restriction imposed by or under any enactment on the charges they may make) so to conduct their affairs as to secure that their revenues become at the earliest possible date, and continue at all times after that to be, at least sufficient to enable them to meet their obligations and to carry out their functions.
- (2) Any excess of OFCOM's revenues for any financial year over the sums required by them for that year for meeting their obligations and carrying out their functions shall be applied by OFCOM in such manner as the Secretary of State, after consultation with OFCOM, may direct.
- (3) A direction under sub-paragraph (2) may require the whole or any part of any such excess to be paid to the Secretary of State.
- (4) The Secretary of State shall pay any sums received by him under sub-paragraph (3) into the Consolidated Fund.
- (5) In this paragraph references to the revenues of OFCOM include references to any penalty that is paid to OFCOM in pursuance of any provision made by or under any enactment.

Grants to OFCOM

- 9 (1) The Secretary of State may, with the consent of the Treasury, make grants to OFCOM of such sums as he may think fit for the purpose of enabling OFCOM to incur or meet liabilities in respect of capital and revenue expenditure.
- (2) Grants under this paragraph shall be paid out of money provided by Parliament.

Advances to OFCOM

- 10 (1) The Secretary of State may make advances to OFCOM out of money provided by Parliament.
- (2) Any sums advanced under this paragraph shall be repaid to the Secretary of State at such times and by such methods, and interest on those sums shall be paid to him at such times and at such rates, as he may from time to time direct.

Accounts and audit

- 11 (1) OFCOM shall—
- (a) keep proper accounts and proper records in relation to the accounts, and
 - (b) prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct.
- (2) OFCOM shall, within such period after the end of the financial year to which it relates as the Secretary of State may direct, send copies of every statement prepared under sub-paragraph (1)(b) to—
- (a) the Secretary of State; and
 - (b) the Comptroller and Auditor General.
- (3) The Comptroller and Auditor General shall—
- (a) examine, certify and report on every statement sent to him under sub-paragraph (2); and
 - (b) lay a copy of the statement and of his report before each House of Parliament.

Annual report

- 12 (1) As soon as possible after the end of each financial year, OFCOM shall prepare and send to the Secretary of State a report of the carrying out of their functions during that financial year.
- (2) Every report under this paragraph shall incorporate—
- (a) a report of OFCOM's proceedings during that year; and
 - (b) such information relating to the financial position of OFCOM, and to any other matters that he considers appropriate, as the Secretary of State may direct.
- (3) The Secretary of State shall lay a copy of every report sent to him under this paragraph before each House of Parliament.

Authentication of OFCOM's seal

- 13 (1) The application of OFCOM's seal shall be authenticated by the signature of—
- (a) the chairman or another member of OFCOM; or
 - (b) any other person authorised by OFCOM (whether generally or specially) for the purpose.
- (2) Subject to sub-paragraph (3), a document purporting to be duly executed under the seal of OFCOM or to be signed on behalf of OFCOM, shall be received in evidence and, except to the extent that the contrary is shown, taken to be duly so executed or signed.
- (3) This paragraph shall not extend to Scotland.

Committees of OFCOM and advisory committees

- 14 (1) OFCOM may make such arrangements as they think fit—
- (a) for the carrying out of any of their functions by committees established by them; and

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- (b) for committees established by OFCOM to give advice to them about matters relating to the carrying out of OFCOM's functions.
- (2) Subject to sub-paragraph (3), the committees established by OFCOM may include committees the membership of which comprises or includes persons (including persons constituting a majority of the committee) who are neither members nor employees of OFCOM.
- (3) Except where—
- (a) the committee is established for the sole purpose of advising OFCOM on matters relating to the carrying out of their functions, and
 - (b) is not authorised under paragraph 18 to carry out functions on behalf of OFCOM,
- the membership of every committee established by OFCOM must contain at least one person who is either a member or an employee of OFCOM, or who is both.
- (4) Where a person who is neither a member nor an employee of OFCOM is a member of any committee established by OFCOM, OFCOM may pay to that person such remuneration and expenses as they may determine.

Proceedings of OFCOM and their committees etc.

- 15 (1) OFCOM may make such other arrangements for regulating their own procedure, and such arrangements for regulating the procedure of the committees established by them, as they think fit.
- (2) The procedure for the carrying out of the separate functions which under this Schedule are conferred on the chairman and non-executive members of OFCOM shall be in accordance with such arrangements as may be determined by a majority of the non-executive members.
- (3) Arrangements under this paragraph may include arrangements as to quorums and as to the making of decisions by a majority.
- (4) OFCOM shall publish, in such manner as they consider appropriate, any arrangements which they make under this paragraph.
- (5) This paragraph has effect subject to paragraph 17.
- 16 OFCOM shall make arrangements for the keeping of proper records—
- (a) of their proceedings;
 - (b) of the proceedings of any committee established by them;
 - (c) of the proceedings at any meeting of the chairman and other non-executive members of OFCOM; and
 - (d) of anything done by an employee or member of OFCOM under paragraph 18(a).

Disqualification for acting in relation to certain matters

- 17 (1) This paragraph applies if at any meeting of—
- (a) OFCOM,
 - (b) the chairman and other non-executive members of OFCOM, or
 - (c) any committee established by OFCOM,

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- any member of OFCOM or, as the case may be, of the committee has any form of direct or indirect interest in any matter falling to be considered at that meeting.
- (2) The person with the interest shall declare it and the declaration shall be recorded in the minutes of the meeting.
- (3) The person with the interest shall not take part in any discussion or decision relating to the matter in which he has an interest, unless—
- (a) in the case of a meeting of OFCOM or of the chairman and other non-executive members of OFCOM, the other members of OFCOM who are present when the discussion or decision falls to take place or is made have resolved unanimously that the interest is to be disregarded; or
 - (b) in any other case, the other members of the committee who are present when the discussion or decision falls to take place or is made have so resolved in the manner authorised by OFCOM.
- (4) It shall be the duty of OFCOM, in granting authorisations for the purposes of sub-paragraph (3)(b), to secure that a resolution for those purposes does not allow a person to take part in a discussion or decision at a meeting of a committee established by virtue of paragraph 14(1)(a) unless at least the following requirements are met—
- (a) the number of other members of the committee in favour of the resolution is not less than two thirds of those who are both present and entitled to vote on the resolution; and
 - (b) the number of other members of the committee in favour of the resolution is not less than its quorum.
- (5) For the purposes of this paragraph a general notification given at or sent to a meeting of OFCOM, of the chairman and other non-executive members of OFCOM or of a committee established by OFCOM that—
- (a) a person is a member of a company or firm, and
 - (b) is to be regarded as interested in any matter involving that company or firm,
- shall be regarded (subject to sub-paragraph (6)(b)), as compliance in relation to any such matter with sub-paragraph (2) for the purposes of that meeting and any subsequent meeting of OFCOM, of the chairman and other non-executive members of OFCOM or of the committee established by OFCOM which is held while the notification is in force.
- (6) A notification for the purposes of sub-paragraph (5)—
- (a) shall remain in force until it is withdrawn, and
 - (b) if given at or sent to a meeting of the chairman and other non-executive members of OFCOM or to a committee shall have effect in relation only to meetings of the chairman and other non-executive members or, as the case may be, to meetings of that committee.
- (7) A person required to make a declaration for the purposes of this paragraph in relation to any meeting—
- (a) shall not be required to attend the meeting; but
 - (b) shall be taken to have complied with the requirements of this paragraph if he takes reasonable steps to secure that notice of his interest is read out at, and taken into consideration at, the meeting in question.
- (8) For the purposes of this paragraph a person shall not be taken to have an interest in any matter specified in sub-paragraph (a) by reason only that he is or has been—

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- (a) the Director General of Telecommunications;
- (b) a member of another existing regulator;
- (c) a member of the staff of any of the existing regulators; or
- (d) a person engaged on the Secretary of State's behalf in any activities connected with the carrying out of functions relating to wireless telegraphy.

(9) Those matters are—

- (a) any matter relating to, or connected with, an existing regulator; and
- (b) any matter relating to, or connected with, the carrying out of any functions relating to wireless telegraphy.

Delegation of functions

- 18 Anything that is authorised or required by or under any enactment to be done by OFCOM may be done on their behalf by—
- (a) any employee or member of OFCOM who has been authorised by OFCOM (whether generally or specially) for the purpose;
 - (b) any committee established by OFCOM which has been so authorised.

Validity of proceedings

- 19 (1) The validity of any proceedings of OFCOM, of the chairman and other non-executive members of OFCOM or of any committee established by OFCOM shall not be affected by—
- (a) any vacancy in the membership of OFCOM or of such a committee;
 - (b) any defect in the appointment of the chairman, deputy chairman or any other member of OFCOM;
 - (c) any failure of the Secretary of State to comply with the requirements of section 1(6)(b); or
 - (d) any failure to comply with any arrangements under paragraph 15 or with any of the requirements of paragraph 17.
- (2) Nothing in sub-paragraph (1)(d) shall validate any proceedings of a meeting which (apart from any matter falling within sub-paragraph (1)(b) or (c)) is inquorate.

Membership of OFCOM not a disqualification for membership of an existing regulator etc.

- 20 Nothing in any enactment or rule of law, or in the terms of any person's appointment, shall be taken as preventing any of the members of OFCOM (including the chairman or deputy chairman), by reason only of his membership of OFCOM—
- (a) from being appointed to or holding office as the Director General of Telecommunications or as a member (including the chairman or deputy chairman) of any other existing regulator;
 - (b) from taking part in any decision or discussion relating to OFCOM at any meeting of an existing regulator or of any committee established by an existing regulator; or
 - (c) from being engaged in any activities connected with the carrying out of the Secretary of State's functions relating to wireless telegraphy.

Disqualification for House of Commons and Northern Ireland Assembly

- 21 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified), there shall be inserted, at the appropriate place—

“The Office of Communications.”;

and a corresponding amendment shall be made in Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25).

Freedom of information

- 22 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities for the purposes of that Act), there shall be inserted, at the appropriate place—

“The Office of Communications.”

Public records

- 23 In paragraph 3 of Schedule 1 to the Public Records Act 1958 (c. 51) (administrative and departmental records of certain bodies to be public records), in the Table, in Part 2, at the appropriate place there shall be inserted—

“Office of Communications.”

Interpretation

- 24 (1) In this Schedule—
“employee”, in relation to OFCOM, includes the chief executive;
“financial year” means—
(a) the period of not more than twelve months beginning with the date on which OFCOM are established under this Act and ending with 31st March; and
(b) every subsequent period of twelve months ending with 31st March;
and
“non-executive member”, in relation to OFCOM, means a member of OFCOM who is not an executive member.
- (2) In this Schedule—
(a) references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement; and
(b) references to the payment of pensions, allowances or gratuities to or in respect of any persons includes a reference to the making of payments towards the provision of the payment of pensions, allowances or gratuities to or in respect of those persons.
- (3) In this Schedule references to functions of OFCOM include references to functions conferred by any enactment or subordinate legislation at any time after the passing of this Act.