

EXPLANATORY NOTES

COMMUNICATIONS ACT 2003

INTRODUCTION

SUMMARY

OVERVIEW OF THE ACT

TERRITORIAL EXTENT AND TERRITORIAL APPLICATION

COMMENTARY ON SECTIONS

PART 1: FUNCTIONS OF OFCOM

Section 1: Functions and general powers of OFCOM

Section 2: Transfer of functions of pre-commencement regulators

Section 3: General duties of OFCOM

Section 4: Duties for the purpose of fulfilling Community obligations

Section 5: Directions in respect of networks or spectrum functions

Section 6: Duties to review regulatory burdens

Section 7: Duty to carry out impact assessments

Section 8: Duty to publish and meet promptness standards

Section 9: Secretary of State's powers in relation to promptness standards

Section 10: Duty to encourage availability of easily usable apparatus

Section 11: Duty to promote media literacy

Section 12: Duty to establish and maintain Content Board

Section 13: Functions of the Content Board

Section 14: Consumer research

Section 15: Duty to publish and take account of research

Section 16: Consumer consultation

Section 17: Membership etc. of the Consumer Panel

Section 18: Committees and other procedure of the Consumer Panel

Section 19: Power to amend remit of Consumer Panel

Section 20: Advisory committees for different parts of the United Kingdom

Section 21: Advisory committee on elderly and disabled persons

Section 22: Representation on international and other bodies

Section 23: Directions for international purposes in respect of broadcasting functions

Section 24: Provision of information to the Secretary of State

Section 25: Community requirement to provide information

Section 26: Publication of information and advice for consumers etc.

Section 27: Training and equality of opportunity

Section 28: General power to charge for services

Section 29: Secretary of State guarantees for OFCOM borrowing

Section 30: Transfers of property etc. from pre-commencement regulators

Section 31: Transitional functions and abolition of pre-commencement regulators

PART 2: NETWORKS, SERVICES AND THE RADIO SPECTRUM

Chapter 1: Electronic Communications Networks and Services

Section 32: Meaning of electronic communications networks and services

Section 33: Advance notification to OFCOM

Section 34: Designations and requirements for the purposes of s. 33

Section 35: Notification of contraventions of s. 33

Section 36: Enforcement notification for contravention of s. 33

Section 37: Penalties for contravention of s. 33

Section 38: Fixing of charges

Section 39: Supplemental provision about fixing charges

Section 40: Notification of non-payment of charges

Section 41: Penalties for non-payment of charges

Section 42: Suspending service provision for non-payment

Section 43: Enforcement of directions under s. 42

Section 44: Duty of OFCOM to keep publicly accessible register

These notes refer to the Communications Act 2003 (c.21)

- Section 45: Power of OFCOM to set conditions
- Section 46: Persons to whom conditions may apply
- Section 47: Tests for setting or modifying conditions
- Section 48: Procedure for setting, modifying and revoking conditions
- Section 49: Directions and approvals for the purposes of a s.45 condition
- Section 50: Delivery of copies of notifications etc.
- Section 51: Matters to which general conditions may relate
- Section 52: Conditions relating to customer interests
- Section 53: Approval of codes of practice for the purposes of s. 52
- Section 54: Approval of dispute procedures for the purposes of s.52
- Section 55: Orders by OFCOM in the absence of conditions under s. 52
- Section 56: The National Telephone Numbering Plan
- Section 57: Conditions to secure access to telephone numbers
- Section 58: Conditions about allocation and adoption of numbers
- Section 59: Telephone numbering conditions binding non-providers
- Section 60: Modification of documents referred to in numbering conditions
- Section 61: Withdrawal of telephone number allocations
- Section 62: Numbering reorganisations
- Section 63: General duty as to telephone numbering functions
- Section 64: Must-carry obligations
- Section 65: Obligations to be secured by universal service conditions
- Section 66: Designation of universal service providers
- Section 67: Subject matter of universal service conditions
- Section 68: Tariffs etc. for universal services
- Section 69: Directories and directory enquiry facilities
- Section 70: Review of compliance costs
- Section 71: Sharing of burden of universal service obligations
- Section 72: Report on sharing mechanism
- Section 73: Permitted subject matter of access-related conditions

These notes refer to the Communications Act 2003 (c.21)

- Section 74: Specific types of access-related conditions
- Section 75: Conditional access systems and access to digital services
- Section 76: Modification and revocation of conditions imposed under s.75
- Section 77: Imposition of privileged supplier conditions
- Section 78: Circumstances required for the setting of SMP conditions
- Section 79: Market power determinations
- Section 80: Proposals for identifying markets and for market determination proposals
- Section 81: Delivery of copies of notifications under ss. 79 and 80
- Section 82: European Commission's powers in respect of proposals
- Section 83: Special rules for transnational markets
- Section 84: Review of services market identifications and determinations
- Section 85: Review of apparatus market identifications and determinations
- Section 86: Cases where review required
- Section 87: Conditions about network access etc.
- Section 88: Conditions about network access pricing etc.
- Section 89: Conditions about network access in exceptional cases
- Section 90: Conditions about carrier selection and pre-selection
- Section 91: Conditions about regulation of services etc. for end-users
- Section 92: Conditions about leased lines
- Section 93: Conditions about apparatus supply
- Section 94: Notification of contravention of condition
- Section 95: Enforcement notification for contravention of conditions
- Section 96: Penalties for contravention of conditions
- Section 97: Amount of penalty under s. 96
- Section 98: Power to deal with urgent cases
- Section 99: Confirmation of directions under s.98
- Section 100: Suspending service provision for contraventions of conditions
- Section 101: Suspending apparatus supply for contraventions of conditions
- Section 102: Procedure for directions under ss. 100 and 101

These notes refer to the Communications Act 2003 (c.21)

- Section 103: Enforcement of directions under ss. 98, 100 and 101
- Section 104: Civil liability for breach of conditions or enforcement notification
- Section 105: Consideration and determination of network access questions
- Section 106: Application of the electronic communications code
- Section 107: Procedure for directions applying code
- Section 108: Register of persons in whose case code applies
- Section 109: Restrictions and conditions subject to which code applies
- Section 110: Enforcement of restrictions and conditions
- Section 111: Enforcement notification for contravention of code restrictions
- Section 112: Penalties for contravention of code restrictions
- Section 113: Suspension of application of code
- Section 114: Procedure for directions under s. 113
- Section 115: Modification and revocation of application of code
- Section 116: Notification of cessation by person to whom code applies
- Section 117: Transitional schemes on cessation of application of code
- Section 118: Compulsory acquisition of land etc.
- Section 119: Power to give assistance in relation to certain proceedings
- Section 120: Conditions regulating premium rate services
- Section 121: Approval of code for premium rate services
- Section 122: Orders by OFCOM in the absence of a code under s.121
- Section 123: Enforcement of s.120 conditions
- Section 124: Suspending service provision for contraventions of s.120 conditions
- Section 125: Dishonestly obtaining electronic communications services
- Section 126: Possession or supply of apparatus etc. for contravening s.125
- Section 127: Improper use of public electronic communications network
- Section 128: Notification of misuse of networks and services
- Section 129: Enforcement notifications for stopping persistent misuse
- Section 130: Penalties for persistent misuse

These notes refer to the Communications Act 2003 (c.21)

Section 131: Statement of policy on persistent misuse

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

Section 133: Enforcement of directions under s. 132

Section 134: Restrictions in leases and licences

Section 135: Information required for purposes of Chapter 1 functions

Section 136: Information required for related purposes

Section 137: Restriction on imposing information requirements

Section 138: Notification of contravention of information requirements

Section 139: Penalties for contravention of information requirement

Section 140: Suspending service provision for information contraventions

Section 141: Suspending apparatus supply for information contraventions

Section 142: Procedure for directions under sections 140 and 141

Section 143: Enforcement of directions under ss. 140 and 141

Section 144: Offences in connection with information requirements

Section 145: Statement of policy on information gathering

Section 146: Provision of information by OFCOM

Section 147: Repeal of provisions of Telecommunications Act 1984

Section 148: Powers of local authorities in connection with networks

Section 149: Grants by Department of Enterprise, Trade and Investment

Section 150: Grants by district councils

Section 151: Interpretation of Chapter 1

Chapter 2: Spectrum Use

Section 152: General functions of OFCOM in relation to radio spectrum

Section 153: United Kingdom Plan for Frequency Authorisation

Section 154: Duties of OFCOM when carrying out spectrum functions

Section 155: Advisory service in relation to interference

Section 156: Directions with respect to the radio spectrum

Section 157: Procedure for directions under s.156

Section 158: Special duty in relation to television multiplexes

These notes refer to the Communications Act 2003 (c.21)

Section 159: Grant of recognised spectrum access

Section 160: Effect of grant of recognised spectrum access

Section 161: Charges in respect of grants of recognised spectrum access

Section 162: Conversion into and from wireless telegraphy licences

Section 163: Payments for use of radio spectrum by the Crown

Section 164: Limitations on authorised spectrum use

Section 165: Terms etc. of wireless telegraphy licences

Section 166: Exemption from need for wireless telegraphy licence

Section 167: Bidding for wireless telegraphy licences

Section 168: Spectrum trading

Section 169: Variation and revocation of wireless telegraphy licences

Section 170: Wireless telegraphy register

Section 171: Information requirements in relation to wireless telegraphy licences

Section 172: Contraventions of conditions for use of wireless telegraphy

Section 173: Meaning of “repeated contravention” in s. 172

Section 174: Procedure for prosecutions of wireless telegraphy offences

Section 175: Special procedure for contraventions by multiplex licence holders

Section 176: Amount of penalty under s. 175

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

Section 178: Proceedings for an offence relating to apparatus use

Section 179: Modification of penalties for certain wireless telegraphy offences

Section 180: Fixed penalties for certain wireless telegraphy offences

Section 181: Power of arrest

Section 182: Forfeiture etc. of restricted apparatus

Section 183: Modification of definition of “undue interference”

Section 184: Modification of definition of “wireless telegraphy”

Chapter 3: Disputes and Appeals

Section 185: Reference of disputes to OFCOM

These notes refer to the Communications Act 2003 (c.21)

Section 186: Action by OFCOM on dispute reference

Section 187: Legal proceedings about referred disputes

Section 188: Procedure for resolving disputes

Section 189: Disputes involving other member States

Section 190: Resolution of referred disputes

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

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

Section 193: Reference of price control matters to the Competition Commission

Section 194: Composition of Competition Commission for price control references

Section 195: Decisions of the Tribunal

Section 196: Appeals from the Tribunal

Section 197: Interpretation of Chapter 3

PART 3: TELEVISION AND RADIO SERVICES

Chapter 1: The BBC, C4C, the Welsh Authority and the Gaelic Media Service

Section 198: Functions of OFCOM in relation to the BBC

Section 199: Functions of C4C

Section 200: Removal of members of C4C

Section 201: Deficits and surpluses of C4C

Section 202: Borrowing limit for C4C

Section 203: Function of OFCOM in relation to the Welsh Authority

Section 204: Welsh Authority's function of providing S4C and S4C Digital

Section 205: Powers to provide other services

Section 206: Other activities of Welsh Authority

Section 207: Welsh Authority finances

Section 208: The Gaelic Media Service

Section 209: Membership of the Service

Section 210: Supplementary provisions about the Service

Chapter 2: Regulatory Structure for Independent Television Services

- Section 211: Regulation of independent television services
- Section 212: Abolition of function of assigning television frequencies
- Section 213: Abolition of licensing for local cable systems
- Section 214: Digital Channel 3 and Channel 5 licences
- Section 215: Replacement of existing Channel 3 and Channel 5 licences
- Section 216: Renewal of Channel 3 and 5 licences
- Section 217: Financial terms of licence renewed under s.216
- Section 218: Duty to secure the provision of a public teletext service
- Section 219: Licensing of the public teletext service
- Section 220: Delegation of provision of public teletext service
- Section 221: Replacement of existing public teletext provider's licence
- Section 222: Renewal of public teletext licence
- Section 223: Financial terms of licence renewed under s. 222
- Section 224: Meaning of "initial expiry date"
- Section 225: Application for review of financial terms of replacement licences
- Section 226: Application for review of financial terms in consequence of new obligations
- Section 227: Reviews under ss. 225 and 226
- Section 228: Giving effect to reviews under ss. 225 and 226
- Section 229: Report in anticipation of new licensing round
- Section 230: Orders suspending rights of renewal
- Section 231: Replacement of Channel 4 licence
- Section 232: Meaning of "television licensable content service"
- Section 233: Services that are not television licensable content services
- Section 234: Modification of ss. 232 and 233
- Section 235: Licensing of television licensable content services
- Section 236: Direction to licensee to take remedial action
- Section 237: Penalties for contravention of licence condition or direction

These notes refer to the Communications Act 2003 (c.21)

Section 238: Revocation of television licensable content service licence

Section 239: Action against licence holders who incite crime or disorder

Section 240: Abolition of separate licences for certain television services

Section 241: Television multiplex services

Section 242: Composition of services in television multiplexes

Section 243: Powers where frequencies reserved for qualifying services

Section 244: Local digital television services

Chapter 3: Regulatory Structure for Independent Radio Services

Section 245: Regulation of independent radio services

Section 246: Abolition of function of assigning radio frequencies

Section 247: Meaning of “radio licensable content services”

Section 248: Services that are not radio licensable content services

Section 249: Modification of ss. 247 and 248

Section 250: Licensing of radio licensable content services

Section 251: Abolition of separate licences for certain sound services

Section 252: Extension of licence periods

Section 253: Extension and modification of existing licences

Section 254: Renewal of local licences

Section 255: Extension of special application procedure for local licences

Section 256: Definition of simulcast radio services

Section 257: Promotion of simulcast radio services

Section 258: Radio multiplex services

Section 259: Composition of services in radio multiplexes

Section 260: Digital sound services for inclusion in non-radio multiplexes

Section 261: Renewal of radio multiplex licences

Section 262: Community radio

Chapter 4: Regulatory Provisions

Section 263: Application of regulatory regimes

Section 264: OFCOM reports on the fulfilment of the public service remit

These notes refer to the Communications Act 2003 (c.21)

- Section 265: Public service remits of licensed providers
- Section 266: Statements of programme policy
- Section 267: Changes of programme policy
- Section 268: Statements of service policy by the public teletext provider
- Section 269: Changes of service policy
- Section 270: Enforcement of public service remits
- Section 271: Power to amend public service remits
- Section 272: Must-offer obligations in relation to networks
- Section 273: Must-offer obligations in relation to satellite services
- Section 274: Securing reception of must-provide services in certain areas
- Section 275: Must-provide services for the purposes of s.274
- Section 276: Co-operation with the public teletext provider
- Section 277: Programming quotas for independent productions
- Section 278: Programming quotas for original productions
- Section 279: News and current affairs programmes
- Section 280: Appointed news providers for Channel 3
- Section 281: Disqualification from appointment as news provider
- Section 282: Power to repeal or modify Channel 3 news provider provisions
- Section 283: News providers for Channel 5
- Section 284: News provision on the public teletext service
- Section 285: Code relating to programme commissioning
- Section 286: Regional programme-making for Channels 3 and 5
- Section 287: Regional programmes on Channel 3
- Section 288: Regional programme-making for Channel 4
- Section 289: Regional matters in the public teletext service
- Section 290: Proposals for arrangements
- Section 291: Obligation as to making and continuance of approved arrangements
- Section 292: OFCOM's power to impose arrangements
- Section 293: Review of approved networking arrangements etc.

These notes refer to the Communications Act 2003 (c.21)

- Section 294: Supplemental provision about networking arrangements
- Section 295: Involvement of C4 Corporation in programme-making
- Section 296: Schools programmes on Channel 4
- Section 297: Channel 4 contribution towards national television archive
- Section 298: Conditions prohibiting interference with other services
- Section 299: Categorisation of listed events
- Section 300: Effects of categorisation of listed events
- Section 301: Code relating to listed events
- Section 302: Regulations about coverage of listed events
- Section 303: Code relating to provision for deaf and visually impaired
- Section 304: Procedure for issuing and revising code under s. 303
- Section 305: Meaning of “relevant date” in s. 303
- Section 306: Power to modify targets in s. 303
- Section 307: Observance of code under s. 303
- Section 308: Assistance for the visually impaired with the public teletext service
- Section 309: Quotas for independent programmes
- Section 310: Code of practice for electronic programme guides
- Section 311: Conditions to comply with code under s. 310
- Section 312: Character and coverage of sound broadcasting services
- Section 313: Consultation about change of character of local service
- Section 314: Local content and character of local sound broadcasting services
- Section 315: Variations of radio multiplex licences affecting service characteristics
- Section 316: Conditions relating to competition matters
- Section 317: Exercise of Broadcasting Act powers for a competition purpose
- Section 318: Review of powers exercised for competition purposes
- Section 319: OFCOM’s standards code
- Section 320: Special impartiality requirements
- Section 321: Objectives for advertisements and sponsorship

These notes refer to the Communications Act 2003 (c.21)

Section 322: Supplementary powers relating to advertising

Section 323: Modification of matters to be taken into account under s. 319

Section 324: Setting and publication of standards

Section 325: Observance of standards code

Section 326: Duty to observe fairness code

Section 327: Standards with respect to fairness

Section 328: Duty to publicise OFCOM's functions in relation to complaints

Section 329: Proscription orders

Section 330: Effect of proscription order

Section 331: Notification for enforcing proscription

Section 332: Penalties for contravention of notification under s.331

Section 333: Party political broadcasts

Section 334: Retention and production of recordings

Section 335: Conditions securing compliance with international obligations

Section 336: Government requirements for licensed services

Section 337: Promotion of equal opportunities and training

Section 338: Corresponding rules for the BBC and the Welsh Authority

Section 339: Review of fulfilment by Welsh Authority of public service remits

Section 340: Directions to Welsh Authority to take remedial action

Section 341: Imposition of penalties on the Welsh Authority

Section 342: Contraventions recorded in Welsh Authority's annual report

Section 343: Provision of information by Welsh Authority

Section 344: Transmission of statement of findings

Section 345: Financial penalties imposable on licence holders

Section 346: Recovery of fees and penalties

Section 347: Statement of charging principles

Chapter 5: Media Ownership and Control

Section 348: Modification of disqualification provisions

Section 349: Licence holding by local authorities

These notes refer to the Communications Act 2003 (c.21)

Section 350: Relaxation of licence-holding restrictions

Section 351: Changes of control of Channel 3 services

Section 352: Action following review under s. 351

Section 353: Changes of control of Channel 5

Section 354: Action following review under s. 353

Section 355: Variation of local licence following change of control

Section 356: Action following review under section 353

Section 357: Meaning of “control”

Chapter 6: Other provisions about television and radio services

Section 358: Annual factual and statistical report

Section 359: Grants to providers

Section 360: Amendments of 1990 and 1996 Acts

Section 361: Meaning of “available for reception by members of the public”

Section 362: Interpretation of Part 3

PART 4: LICENSING OF TV RECEPTION

Section 363: Licence required for use of TV receiver

Section 364: TV licences

Section 365: TV licence fees

Section 366: Powers to enforce TV licensing

Section 367: Interpretation of provisions about dealer notification

Section 368: Meaning of “television receiver” and “use”

PART 5: COMPETITION IN COMMUNICATIONS MARKETS

Chapter 1: Functions of OFCOM under Competition Legislation

Section 369: Matters in relation to which OFCOM have competition functions

Section 370: OFCOM’s functions under Part 4 of the Enterprise Act 2002

Section 371: OFCOM’s functions under the Competition Act 1998

Section 372: Application of the Competition Act 1998 to news provision

Chapter 2: Media mergers

Section 373: Repeal of existing newspaper merger regime

These notes refer to the Communications Act 2003 (c.21)

Section 374: Repeal of exclusion for newspaper mergers from general merger controls

Section 375: Media public interest considerations

Section 376: Adaptation of role of OFT in initial investigations and reports

Section 377: Additional investigation and report by OFCOM

Section 378: Extension of special public interest regime for certain media mergers

Section 379: Adaptation of role of OFT in special public interest regime

Section 380: Additional investigation and report by OFCOM: special public interest cases

Section 381: Public consultation in relation to media mergers

Section 382: General information duties in relation to media mergers

Section 383: Advice and information in relation to media mergers

Section 384: General advisory functions of OFCOM in relation to media mergers

Section 385: Other general functions of OFCOM in relation to media mergers

Section 386: Monitoring role for OFT in relation to media mergers

Section 387: Enforcement powers in relation to newspaper and other media mergers

Section 388: Alterations to newspaper panel of Competition Commission

Section 389: Further provision in connection with media mergers

PART 6: MISCELLANEOUS AND SUPPLEMENTAL

Section 390: Annual report on the Secretary of State's functions

Section 391: Review of media ownership

Section 392: Penalties imposed by OFCOM

Section 393: General restrictions on disclosure of information

Section 394: Service of notifications and other documents

Section 395: Notifications and documents in electronic form

Section 396: Timing and location of things done electronically

Section 397: Purchase of Duchy of Lancaster land

Section 398: Repeal of certain provisions of the Telecommunications Act 1984

Section 399: Expenses

These notes refer to the Communications Act 2003 (c.21)

Section 400: Destination of licence fees and penalties

Section 401: Power of OFCOM to retain costs of carrying out spectrum functions

Section 402: Power of Secretary of State to make orders and regulations

Section 403: Regulations and orders made by OFCOM

Section 404: Criminal liability of company directors etc.

Section 405: General interpretation

Section 406: Minor and consequential amendments, transitionals and repeals

Section 407: Pre-consolidation amendments

Section 408: Transitional provision for anticipatory carrying out of functions

Section 409: Modifications consequential on regulations implementing Directives

Section 410: Application of enactments to territorial sea and other waters

Section 411: Short title, commencement and extent

SCHEDULES

Schedule 1: Functions transferred to OFCOM

Schedule 2: Transfer schemes

Schedule 3: Amendments of Schedule 2 to the Telecommunications Act 1984

Schedule 4: Compulsory purchase and entry for exploratory purposes

Schedule 5: Procedure for grants of recognised spectrum access

Schedule 6: Fixed penalties for wireless telegraphy offences

Schedule 7: Seizure and forfeiture of apparatus

Schedule 8: Decisions not subject to appeal

Schedule 9: Arrangements about carrying on of C4C's activities

Schedule 10: Licensing the public teletext service.

Schedule 11: Approval, imposition and modification of networking arrangements

Schedule 12: Corresponding obligations of the BBC and Welsh Authority

Schedule 13: Financial penalties under the Broadcasting Acts

Schedule 14: Media ownership rules

Schedule 15: Amendments of Broadcasting Acts

Schedule 16: Further amendments in connection with media mergers

These notes refer to the Communications Act 2003 (c.21)

Schedule 17: Minor and Consequential Amendments

Schedule 18: Transitional Provisions

Schedule 19: Repeals

COMMENCEMENT

APPENDIX 1

APPENDIX 2

APPENDIX 3