



# Communications Act 2003

## 2003 CHAPTER 21

### PART 1

#### FUNCTIONS OF OFCOM

##### *Transferred and assigned functions*

#### **1 Functions and general powers of OFCOM**

- (1) The Office of Communications (“OFCOM”) shall have the following functions—
  - (a) the functions transferred to OFCOM under section 2; and
  - (b) such other functions as may be conferred on OFCOM by or under any enactment (including this Act).
- (2) OFCOM shall also have any functions in relation to telephone numbers that are conferred on them by the law of the Isle of Man or of any of the Channel Islands.
- (3) OFCOM may do anything which appears to them to be incidental or conducive to the carrying out of their functions, including borrow money.
- (4) OFCOM are not to borrow money except with the consent of the Secretary of State, or in accordance with a general authorisation given by him.
- (5) OFCOM’s powers under subsection (3) include, in particular—
  - (a) power to undertake research and development work in connection with any matter in relation to which they have functions;
  - (b) power to promote the carrying out of such research and development by others, or otherwise to arrange for it to be carried out by others;
  - (c) power to institute and carry on criminal proceedings in England and Wales or Northern Ireland for an offence relating to a matter in relation to which they have functions; and
  - (d) power, in such cases and in such circumstances as they may think fit, to make payments (where no legal liability arises) to persons adversely affected by the carrying out by OFCOM of any of their functions.

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- (6) In exercise of their powers under subsection (3), OFCOM must establish and maintain separate offices in each of the following parts of the United Kingdom—
- (a) England;
  - (b) Wales;
  - (c) Scotland; and
  - (d) Northern Ireland.
- (7) Part 2 of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out) is to have effect in relation to the functions conferred on OFCOM by or under any enactment as if—
- (a) OFCOM were an office holder within the meaning of that Part; and
  - (b) a power of OFCOM to make subordinate legislation were excluded from section 69 of that Act to the extent only that it is exercisable by statutory instrument.
- (8) In this section “telephone numbers” has the same meaning as in Chapter 1 of Part 2.

## **2 Transfer of functions of pre-commencement regulators**

- (1) As from such date as the Secretary of State may appoint for the coming into force of this section, the functions that are set out in Schedule 1 (functions of the Secretary of State and of the pre-commencement regulators) shall become functions of OFCOM in accordance with that Schedule.
- (2) References in any enactment to a person who is a person from whom functions are transferred by virtue of this section are to have effect, so far as necessary for the purposes of the transfers, as references to OFCOM.
- (3) The functions of OFCOM are to include the carrying out of the transferred functions, at times after the time when they become functions of OFCOM, in relation to anything occurring before that time.
- (4) The provisions of this section have effect subject to—
- (a) the modifications made by this Act of the enactments relating to the transferred functions; and
  - (b) any express transitional or consequential provisions made by or under this Act in relation to those enactments.

### *General duties in carrying out functions*

## **3 General duties of OFCOM**

- (1) It shall be the principal duty of OFCOM, in carrying out their functions—
- (a) to further the interests of citizens in relation to communications matters; and
  - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following—
- (a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;

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- (b) the availability throughout the United Kingdom of a wide range of electronic communications services;
  - (c) the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
  - (d) the maintenance of a sufficient plurality of providers of different television and radio services;
  - (e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
  - (f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both—
    - (i) unfair treatment in programmes included in such services; and
    - (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (3) In performing their duties under subsection (1), OFCOM must have regard, in all cases, to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (b) any other principles appearing to OFCOM to represent the best regulatory practice.
- (4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances—
- (a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;
  - (b) the desirability of promoting competition in relevant markets;
  - (c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
  - (d) the desirability of encouraging investment and innovation in relevant markets;
  - (e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
  - (f) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
  - (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
  - (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
  - (i) the needs of persons with disabilities, of the elderly and of those on low incomes;
  - (j) the desirability of preventing crime and disorder;
  - (k) the opinions of consumers in relevant markets and of members of the public generally;

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- (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas;
  - (m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.
- (5) In performing their duty under this section of furthering the interests of consumers, OFCOM must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- (6) Where it appears to OFCOM, in relation to the carrying out of any of the functions mentioned in section 4(1), that any of their general duties conflict with one or more of their duties under sections 4, 24 and 25, priority must be given to their duties under those sections.
- (7) Where it appears to OFCOM that any of their general duties 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.
- (8) Where OFCOM resolve a conflict in an important case between their duties under paragraphs (a) and (b) of subsection (1), they must publish a statement setting out—
  - (a) the nature of the conflict;
  - (b) the manner in which they have decided to resolve it; and
  - (c) the reasons for their decision to resolve it in that manner.
- (9) Where OFCOM are required to publish a statement under subsection (8), they must—
  - (a) publish it as soon as possible after making their decision but not while they would (apart from a statutory requirement to publish) be subject to an obligation not to publish a matter that needs to be included in the statement; and
  - (b) so publish it in such manner as they consider appropriate for bringing it to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the matters to which the decision relates.
- (10) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM’s annual report) for a financial year must contain a summary of the manner in which, in that year, OFCOM resolved conflicts arising in important cases between their general duties.
- (11) A case is an important case for the purposes of subsection (8) or (10) only if—
  - (a) it involved one or more of the matters mentioned in subsection (12); or
  - (b) it otherwise appears to OFCOM to have been of unusual importance.
- (12) Those matters are—
  - (a) a major change in the activities carried on by OFCOM;
  - (b) matters likely to have a significant impact on persons carrying on businesses in any of the relevant markets; or
  - (c) matters likely to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.
- (13) This section is subject to sections 370(11) and 371(11) of this Act and to section 119A(4) of the Enterprise Act 2002 (c. 40) (which applies to functions conferred on OFCOM by Chapter 2 of Part 5 of this Act).

(14) In this section—

“citizens” means all members of the public in the United Kingdom;

“communications matters” means the matters in relation to which OFCOM have functions;

“general duties”, in relation to OFCOM, means—

(a) their duties under subsections (1) to (5); and

(b) the duty which, under section 107(5), is to rank equally for the purposes of subsections (6) and (7) with their duties under this section;

“relevant markets” means markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

#### **4 Duties for the purpose of fulfilling Community obligations**

(1) This section applies to the following functions of OFCOM—

(a) their functions under Chapter 1 of Part 2;

(b) their functions under the enactments relating to the management of the radio spectrum;

(c) their functions under Chapter 3 of Part 2 in relation to disputes referred to them under section 185;

(d) their functions under sections 24 and 25 so far as they relate to information required for purposes connected with matters in relation to which functions specified in this subsection are conferred on OFCOM; and

(e) their functions under section 26 so far as they are carried out for the purpose of making information available to persons mentioned in subsection (2)(a) to (c) of that section.

(2) It shall be the duty of OFCOM, in carrying out any of those functions, to act in accordance with the six Community requirements (which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive and are to be read accordingly).

(3) The first Community requirement is a requirement to promote competition—

(a) in relation to the provision of electronic communications networks and electronic communications services;

(b) in relation to the provision and making available of services and facilities that are provided or made available in association with the provision of electronic communications networks or electronic communications services; and

(c) in relation to the supply of directories capable of being used in connection with the use of electronic communications networks or electronic communications services.

(4) The second Community requirement is a requirement to secure that OFCOM’s activities contribute to the development of the European internal market.

(5) The third Community requirement is a requirement to promote the interests of all persons who are citizens of the European Union (within the meaning of Article 17 of the Treaty establishing the European Community).

(6) The fourth Community requirement is a requirement to take account of the desirability of OFCOM’s carrying out their functions in a manner which, so far as practicable, does not favour—

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- (a) one form of electronic communications network, electronic communications service or associated facility; or
  - (b) one means of providing or making available such a network, service or facility, over another.
- (7) The fifth Community requirement is a requirement to encourage, to such extent as OFCOM consider appropriate for the purpose mentioned in subsection (8), the provision of network access and service interoperability.
- (8) That purpose is the purpose of securing—
- (a) efficiency and sustainable competition in the markets for electronic communications networks, electronic communications services and associated facilities; and
  - (b) the maximum benefit for the persons who are customers of communications providers and of persons who make such facilities available.
- (9) The sixth Community requirement is a requirement to encourage such compliance with the standards mentioned in subsection (10) as is necessary for—
- (a) facilitating service interoperability; and
  - (b) securing freedom of choice for the customers of communications providers.
- (10) Those standards are—
- (a) 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.
- (11) Where it appears to OFCOM that any of the Community requirements conflict with each other, they must secure that the conflict is resolved in the manner they think best in the circumstances.
- (12) In this section—
- “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;
  - “network access” and “service interoperability” each has the same meaning as in Chapter 1 of Part 2.

## **5 Directions in respect of networks and spectrum functions**

- (1) This section applies to the following functions of OFCOM—
- (a) their functions under Part 2; and
  - (b) their functions under the enactments relating to the management of the radio spectrum that are not contained in that Part.

- (2) It shall be the duty of OFCOM to carry out those functions in accordance with such general or specific directions as may be given to them by the Secretary of State.
- (3) The Secretary of State's power to give directions under this section shall be confined to a power to give directions for one or more of the following purposes—
  - (a) in the interests of national security;
  - (b) in the interests of relations with the government of a country or territory outside the United Kingdom;
  - (c) for the purpose of securing compliance with international obligations of the United Kingdom;
  - (d) in the interests of the safety of the public or of public health.
- (4) The Secretary of State is not entitled by virtue of any provision of this section to direct OFCOM to suspend or restrict—
  - (a) a person's entitlement to provide an electronic communications network or electronic communications service; or
  - (b) a person's entitlement to make available associated facilities.
- (5) The Secretary of State must publish a direction under this section in such manner as appears to him to be appropriate for bringing it to the attention of the persons who, in his opinion, are likely to be affected by it.
- (6) The Secretary of State is not required by subsection (5) to publish a direction, and he may exclude matter from a direction he does publish, if he considers the publication of the direction or matter to be—
  - (a) against the interests of national security; or
  - (b) against the interests of relations with the government of a country or territory outside the United Kingdom.
- (7) Subsection (4) does not affect the Secretary of State's powers under section 132.

## **6 Duties to review regulatory burdens**

- (1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve—
  - (a) the imposition of burdens which are unnecessary; or
  - (b) the maintenance of burdens which have become unnecessary.
- (2) In reviewing their functions under this section it shall be the duty of OFCOM—
  - (a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and
  - (b) in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by OFCOM.
- (3) In determining for the purposes of this section whether procedures for self-regulation are effective OFCOM must consider, in particular—
  - (a) whether those procedures are administered by a person who is sufficiently independent of the persons who may be subjected to the procedures; and
  - (b) whether adequate arrangements are in force for funding the activities of that person in relation to those procedures.

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- (4) OFCOM must, from time to time, publish a statement setting out how they propose, during the period for which the statement is made, to secure that regulation by OFCOM does not involve the imposition or maintenance of unnecessary burdens.
- (5) The first statement to be published under this section—
  - (a) must be published as soon as practicable after the commencement of this section; and
  - (b) shall be a statement for the period of twelve months beginning with the day of its publication.
- (6) A subsequent statement—
  - (a) must be published during the period to which the previous statement related; and
  - (b) must be a statement for the period of twelve months beginning with the end of the previous period.
- (7) It shall be the duty of OFCOM, in carrying out their functions at times during a period for which a statement is in force under this section, to have regard to that statement.
- (8) OFCOM may, if they think fit, revise a statement under this section at any time before or during the period for which it is made.
- (9) Where OFCOM revise a statement, they must publish the revision as soon as practicable.
- (10) The publication under this section of a statement, or of a revision of a statement, 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 the matters to which it relates.

## **7 Duty to carry out impact assessments**

- (1) This section applies where—
  - (a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and
  - (b) it appears to them that the proposal is important;but this section does not apply if it appears to OFCOM that the urgency of the matter makes it impracticable or inappropriate for them to comply with the requirements of this section.
- (2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following—
  - (a) to involve a major change in the activities carried on by OFCOM;
  - (b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or
  - (c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.
- (3) Before implementing their proposal, OFCOM must either—
  - (a) carry out and publish an assessment of the likely impact of implementing the proposal; or



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- (b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.
- (4) An assessment under subsection (3)(a) must set out how, in OFCOM's opinion, the performance of their general duties (within the meaning of section 3) is secured or furthered by or in relation to what they propose.
- (5) An assessment carried out under this section—
  - (a) may take such form, and
  - (b) must relate to such matters,as OFCOM consider appropriate.
- (6) In determining the matters to which an assessment under this section should relate, OFCOM must have regard to such general guidance relating to the carrying out of impact assessments as they consider appropriate.
- (7) Where OFCOM publish an assessment under this section—
  - (a) they must provide an opportunity of making representations to them about their proposal to members of the public and other persons who, in OFCOM's opinion, are likely to be affected to a significant extent by its implementation;
  - (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
  - (c) OFCOM are not to implement their proposal unless the period for making representations about it has expired and they have considered all the representations that were made in that period.
- (8) Where OFCOM are required (apart from this section)—
  - (a) to consult about a proposal to which this section applies, or
  - (b) to give a person an opportunity of making representations about it,the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.
- (9) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM's annual report) must set out—
  - (a) a list of the assessments under this section carried out during the financial year to which the report relates; and
  - (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.
- (10) The publication of anything under this section must be 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 if their proposal is implemented.

## **8 Duty to publish and meet promptness standards**

- (1) It shall be the duty of OFCOM to publish a statement setting out the standards they are proposing to meet with respect to promptness in—
  - (a) the carrying out of their different functions; and
  - (b) the transaction of business for purposes connected with the carrying out of those functions.

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- (2) This section does not require standards to be set out with respect to anything which (apart from this section) is required to be done by a time, or within a period, provided for by or under an enactment.
- (3) OFCOM may, if they think fit, at any time revise the statement for the time being in force under this section.
- (4) It shall be the duty of OFCOM—
  - (a) in carrying out their functions, and
  - (b) in transacting business for purposes connected with the carrying out of their functions,to have regard to the statement for the time being in force under this section.
- (5) Where OFCOM revise a statement under this section, they must publish the revision as soon as practicable.
- (6) The publication under this section of a statement, or of a revision of a statement, 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 the matters to which it relates.
- (7) OFCOM's report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (annual report) for each financial year must contain a statement by OFCOM summarising the extent to which they have complied during that year with the standards set out under this section.

## **9 Secretary of State's powers in relation to promptness standards**

- (1) Where the Secretary of State considers that the statement published by OFCOM under section 8 is not adequate for securing that they meet satisfactory promptness standards, he may give them a notification to that effect.
- (2) If the period of three months after the date of the giving of a notification under subsection (1) expires without OFCOM taking steps which the Secretary of State is satisfied remedy the situation, he may give them a direction under this section.
- (3) A direction under this section is one requiring OFCOM to issue a new or revised statement under section 8 in accordance with the direction.
- (4) Before giving a direction under this section, the Secretary of State must—
  - (a) give OFCOM an opportunity of making representations to him about his proposed direction; and
  - (b) have regard to any representations made to him by them.
- (5) Where the Secretary of State gives a direction to OFCOM under this section, he must publish a copy of it in such manner as he considers appropriate for bringing it to the attention of persons who, in his opinion, are likely to be affected by OFCOM's promptness standards.
- (6) It shall be the duty of OFCOM to revise their statement under section 8 in accordance with any direction of the Secretary of State under this section.
- (7) In this section "promptness standards" means standards of promptness in—
  - (a) the carrying out by OFCOM of their different functions; and

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- (b) the transaction by them of business for purposes connected with the carrying out of those functions.
- (8) No notification is to be given under subsection (1) at any time in the period of twelve months beginning with the commencement of section 8.

#### *Accessible domestic communications apparatus*

### **10 Duty to encourage availability of easily usable apparatus**

- (1) It shall be the duty of OFCOM to take such steps, and to enter into such arrangements, as appear to them calculated to encourage others to secure—
- (a) that domestic electronic communications apparatus is developed which is capable of being used with ease, and without modification, by the widest possible range of individuals (including those with disabilities); and
  - (b) that domestic electronic communications apparatus which is capable of being so used is as widely available as possible for acquisition by those wishing to use it.
- (2) It shall be the duty of OFCOM from time to time to review whether they need to take further steps, or to enter into further arrangements, for the purpose of performing their duty under this section.
- (3) OFCOM must not do anything under this section that would be inconsistent with the Community requirements set out in section 4.
- (4) In this section “electronic communications apparatus” means apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network.
- (5) For the purposes of this section electronic communications apparatus is domestic electronic communications apparatus except to the extent that it is designed or adapted for use solely for the purposes of, or in connection with, a business.
- (6) 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.

#### *Media literacy*

### **11 Duty to promote media literacy**

- (1) It shall be the duty of OFCOM to take such steps, and to enter into such arrangements, as appear to them calculated—
- (a) to bring about, or to encourage others to bring about, a better public understanding of the nature and characteristics of material published by means of the electronic media;

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- (b) to bring about, or to encourage others to bring about, a better public awareness and understanding of the processes by which such material is selected, or made available, for publication by such means;
  - (c) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which access to material published by means of the electronic media is or can be regulated;
  - (d) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which persons to whom such material is made available may control what is received and of the uses to which such systems may be put; and
  - (e) to encourage the development and use of technologies and systems for regulating access to such material, and for facilitating control over what material is received, that are both effective and easy to use.
- (2) In this section, references to the publication of anything by means of the electronic media are references to its being—
- (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
  - (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

#### *OFCOM's Content Board*

## **12 Duty to establish and maintain Content Board**

- (1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee to be known as “the Content Board”.
- (2) The Content Board shall consist of—
- (a) a chairman appointed by OFCOM; and
  - (b) such number of other members appointed by OFCOM as OFCOM think fit.
- (3) The chairman of the Content Board must be a non-executive member of OFCOM but is not to be the chairman of OFCOM.
- (4) At least one of the other members of the Content Board must also be a non-executive member of OFCOM other than the chairman of OFCOM.
- (5) In appointing persons to be members of the Content Board, OFCOM must secure that, for each of the following parts of the United Kingdom—
- (a) England,
  - (b) Scotland,
  - (c) Wales, and
  - (d) Northern Ireland,
- there is a different member of the Board capable of representing the interests and opinions of persons living in that part of the United Kingdom.
- (6) In appointing a person for the purposes of subsection (5)(a), OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions of persons living in all the different regions of England.

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- (7) The validity of any proceedings of the Content Board shall not be affected by any failure by OFCOM to comply with subsection (5) or (6).
- (8) It shall be the duty of OFCOM when appointing members of the Content Board to secure, so far as practicable, that a majority of the members of the Board (counting the chairman) consists of persons who are neither members nor employees of OFCOM.
- (9) The following shall be disqualified from being the chairman or another member of the Content Board—
  - (a) governors and employees of the BBC;
  - (b) members and employees of the Welsh Authority; and
  - (c) members and employees of C4C.
- (10) Before appointing a person to be the chairman or another member of the Content Board, OFCOM must satisfy themselves that he will not have any financial or other interest which would be likely prejudicially to affect the carrying out by him of any of his functions as chairman or member of the Content Board.
- (11) A person is not to be taken to have such an interest by reason only that he is or will be a member or employee of OFCOM.
- (12) Every person whom OFCOM propose to appoint to be the chairman or another member of the Content Board, shall, whenever requested to do so by OFCOM, furnish OFCOM with any information they consider necessary for the performance of their duty under subsection (10).
- (13) In addition to paying remuneration and expenses under paragraph 14(4) of the Schedule to the Office of Communications Act 2002 (c. 11), OFCOM may—
  - (a) pay to, or in respect of, any member of the Content Board who is not a member or employee of OFCOM, such sums by way of pensions, allowances or gratuities as OFCOM may determine; and
  - (b) provide for the making of such payments to or in respect of any such member of the Content Board.
- (14) In subsection (13)—
  - (a) the reference to pensions, allowances and gratuities includes a reference to similar benefits payable on death or retirement; and
  - (b) the reference to providing for the payment of a pension, allowance or gratuity to, or in respect of, a person includes a reference to the making of payments towards the provision or payment of a pension, allowance or gratuity, or of any such similar benefits, to or in respect of that person.

### **13 Functions of the Content Board**

- (1) The Content Board shall have such functions as OFCOM, in exercise of their powers under the Schedule to the Office of Communications Act 2002 (c. 11), may confer on the Board.
- (2) The functions conferred on the Board must include, to such extent and subject to such restrictions and approvals as OFCOM may determine, the carrying out on OFCOM's behalf of—

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- (a) functions in relation to matters that concern the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks; and
  - (b) functions in relation to the promotion of public understanding or awareness of matters relating to the publication of matter by means of the electronic media.
- (3) In determining what functions to confer on the Content Board, OFCOM must have particular regard to the desirability of securing that the Board have at least a significant influence on decisions which—
- (a) relate to the matters mentioned in subsection (2); and
  - (b) involve the consideration of different interests and other factors as respects different parts of the United Kingdom.
- (4) It shall be the duty of the Content Board to ensure, in relation to—
- (a) the carrying out of OFCOM’s functions under Part 3 of this Act, Parts 1 and 3 of the 1990 Act and Parts 1 and 2 of the 1996 Act,
  - (b) the matters with respect to which functions are conferred on the Board, and
  - (c) such other matters mentioned in subsection (2) as OFCOM may determine,
- that OFCOM are aware of the different interests and other factors which, in the Board’s opinion, need to be taken into account as respects the different parts of the United Kingdom in relation to the carrying out of OFCOM’s functions.
- (5) The power of OFCOM to determine the Content Board’s functions includes power to authorise the Board to establish committees and panels to advise the Board on the carrying out of some or all of the Board’s functions.
- (6) The power of OFCOM to authorise the establishment of a committee or panel by the Content Board includes power to authorise the establishment of a committee or panel that includes persons who are not members of the Board.
- (7) In this section references to the publication of anything by means of the electronic media are references to its being—
- (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
  - (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

*Functions for the protection of consumers*

**14 Consumer research**

- (1) OFCOM must make arrangements for ascertaining—
- (a) the state of public opinion from time to time about the manner in which electronic communications networks and electronic communications services are provided;
  - (b) the state of public opinion from time to time about the manner in which associated facilities are made available;
  - (c) the experiences of consumers in the markets for electronic communications services and associated facilities, in relation to the manner in which electronic communications networks and electronic communications services are provided and associated facilities made available;

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- (d) the experiences of such consumers in relation to the handling, by communications providers and by persons making such facilities available, of complaints made to them by such consumers;
  - (e) the experiences of such consumers in relation to the resolution of disputes with communications providers or with persons making associated facilities available; and
  - (f) the interests and experiences of such consumers in relation to other matters that are incidental to, or are otherwise connected with, their experiences of the provision of electronic communications networks and electronic communications services or of the availability of associated facilities.
- (2) The matters to which the arrangements must relate do not include the incidence or investigation of interference (within the meaning of the Wireless Telegraphy Act 1949 (c. 54)) with wireless telegraphy.
- (3) The matters to which the arrangements must relate do not (except so far as authorised or required by subsections (4) to (6)) include public opinion with respect to—
- (a) the contents of anything broadcast or otherwise published by means of an electronic communications network; or
  - (b) the experiences or interests of consumers in any market for electronic communications services with respect to anything so broadcast or published.
- (4) OFCOM must make arrangements for ascertaining—
- (a) the state of public opinion from time to time concerning programmes included in television and radio services;
  - (b) any effects of such programmes, or of other material published by means of the electronic media, on the attitudes or behaviour of persons who watch, listen to or receive the programmes or material; and
  - (c) so far as necessary for the purpose mentioned in subsection (5), the types of programmes that members of the public would like to see included in television and radio services.
- (5) That purpose is the carrying out by OFCOM of their functions under Chapter 4 of Part 3 of this Act.
- (6) OFCOM must make arrangements for the carrying out of research into the following—
- (a) the matters mentioned in section 11(1);
  - (b) matters relating to, or connected with, the setting of standards under section 319 of this Act;
  - (c) matters relating to, or connected with, the observance of those standards by persons providing television and radio services;
  - (d) matters relating to, or connected with, the prevention of unjust or unfair treatment in programmes included in such services; and
  - (e) matters relating to, or connected with, the prevention of unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (7) Arrangements made by OFCOM for the purposes of this section may include arrangements for the carrying out of research in one or more of the following ways—
- (a) by members or employees of OFCOM;
  - (b) by the Content Board;
  - (c) in accordance with arrangements made by that Board;

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- (d) by persons who are neither members nor employees of OFCOM.
- (8) In this section references to the publication of anything by means of the electronic media are references to its being—
  - (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
  - (b) distributed by means of an electronic communications network to members of the public or of a section of the public.
- (9) This section does not restrict OFCOM's power to make any arrangements they consider to be incidental or conducive to the carrying out of any of their functions.

## **15 Duty to publish and take account of research**

- (1) It shall be the duty of OFCOM—
  - (a) to publish the results of any research carried out by them or on their behalf under section 14; and
  - (b) to consider and, to such extent as they think fit, to take account of the results of such research in the carrying out of their functions.
- (2) OFCOM are not required under this section—
  - (a) to publish any matter that is confidential in accordance with subsection (3) or (4); or
  - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (3) 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.
- (4) 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.
- (5) The publication of research under this section must be in such manner as OFCOM consider appropriate.

## **16 Consumer consultation**

- (1) It shall be the duty of OFCOM to establish and maintain effective arrangements for consultation about the carrying out of their functions with—
  - (a) consumers in the markets for the services and facilities in relation to which OFCOM have functions;
  - (b) consumers in the markets for apparatus used in connection with any such services or facilities;
  - (c) consumers in the markets for directories capable of being used in connection with the use of an electronic communications network or electronic communications service.



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- (2) The arrangements must include the establishment and maintenance of a panel of persons (in this Act referred to as “the Consumer Panel”) with the function of advising both—
- (a) OFCOM; and
  - (b) such other persons as the Panel think fit.
- (3) The arrangements must secure that the matters about which the Consumer Panel are able to give advice include the interests of domestic and small business consumers in relation to the following matters—
- (a) the provision of electronic communications networks;
  - (b) the provision and making available of the services and facilities mentioned in subsection (4);
  - (c) the supply of apparatus designed or adapted for use in connection with any such services or facilities;
  - (d) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service;
  - (e) the financial and other terms on which such services or facilities are provided or made available, or on which such apparatus or such a directory is supplied;
  - (f) standards of service, quality and safety for such services, facilities, apparatus and directories;
  - (g) the handling of complaints made by persons who are consumers in the markets for such services, facilities, apparatus or directories to the persons who provide the services or make the facilities available, or who are suppliers of the apparatus or directories;
  - (h) the resolution of disputes between such consumers and the persons who provide such services or make such facilities available, or who are suppliers of such apparatus or directories;
  - (i) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;
  - (j) the information about service standards and the rights of consumers that is made available by persons who provide or make available such services or facilities, or who are suppliers of such apparatus or directories;
  - (k) any other matter appearing to the Panel to be necessary for securing effective protection for persons who are consumers in the markets for any such services, facilities, apparatus or directories.
- (4) Those services and facilities are—
- (a) electronic communications services;
  - (b) associated facilities;
  - (c) directory enquiry facilities;
  - (d) a service consisting in the supply of information for use in responding to directory enquiries or of an electronic programme guide; and
  - (e) every service or facility not falling within any of the preceding paragraphs which is provided or made available to members of the public—
    - (i) by means of an electronic communications network; and
    - (ii) in pursuance of agreements entered into between the person by whom the service or facility is provided or made available and each of those members of the public.

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- (5) The matters about which the Consumer Panel are to be able to give advice do not include any matter that concerns the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks.
- (6) The arrangements made by OFCOM under this section must also secure that the Consumer Panel are able, in addition to giving advice on the matters mentioned in subsection (3), to do each of the following—
  - (a) at the request of OFCOM, to carry out research for OFCOM in relation to any of the matters in relation to which OFCOM have functions under section 14;
  - (b) to make arrangements for the carrying out of research into such other matters appearing to the Panel to be relevant to the carrying out of the Panel's functions as they think fit;
  - (c) to give advice to OFCOM in relation to any matter referred to the Panel by OFCOM for advice;
  - (d) to publish such information as the Panel think fit about the advice they give, about the carrying out of the Panel's other functions and about the results of research carried out by them or on their behalf.
- (7) It shall be the duty of OFCOM, in the carrying out of their functions, to consider and, to such extent as they think appropriate, to have regard to—
  - (a) any advice given to OFCOM by the Consumer Panel; and
  - (b) any results notified to OFCOM of any research undertaken by that Panel.
- (8) It shall also be the duty of OFCOM (subject to subsection (9))—
  - (a) to provide the Consumer Panel with all such information as, having regard, in particular, to the need to preserve commercial confidentiality, OFCOM consider appropriate to disclose to the Panel for the purpose of enabling the Panel to carry out their functions; and
  - (b) to provide the Panel with all such further information as the Panel may require.
- (9) OFCOM are not required to provide information by virtue of subsection (8)(b) if, having regard to—
  - (a) the need to preserve commercial confidentiality, and
  - (b) any other matters that appear to OFCOM to be relevant,it is reasonable for OFCOM to refuse to disclose it to the Panel.
- (10) It shall be the duty of OFCOM, in the case of any advice or opinion received from and published by the Panel which OFCOM propose to disregard in whole or in part, or with which OFCOM disagree in whole or in part—
  - (a) to ensure that the Panel know OFCOM's reasons for disregarding or disagreeing with the advice or opinion; and
  - (b) to ensure that those reasons are or have been published in such manner as OFCOM consider appropriate for bringing them to the attention of persons who are aware of the Panel's advice or opinion.
- (11) The Consumer Panel must—
  - (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
  - (b) as soon as practicable after the end of each subsequent period of twelve months,prepare a report on the carrying out of their functions in that period.

- (12) The Consumer Panel must publish each report—
- (a) as soon as practicable after its preparation is complete; and
  - (b) in such manner as they consider appropriate.
- (13) In this section—
- “domestic and small business consumer” means a person who—
- (a) is a consumer in the market for services or facilities mentioned in subsection (4) or for apparatus designed or adapted for use in connection with any such services or facilities; but
  - (b) is neither—
    - (i) a communications provider or a person who makes associated facilities available; nor
    - (ii) a person who is a consumer in the market in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);
- “electronic programme guide” means a 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 the providers of which are or include persons other than the provider of the guide; and
  - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.

## **17 Membership etc. of the Consumer Panel**

- (1) The members of the Consumer Panel shall be appointed by OFCOM and shall comprise a chairman and such other members as OFCOM may determine.
- (2) The approval of the Secretary of State is required for the appointment of a person to be the chairman or to be another member of the Panel.
- (3) In appointing persons to be members of the Consumer Panel, OFCOM must secure that, for each of the following parts of the United Kingdom—
- (a) England,
  - (b) Scotland,
  - (c) Wales, and
  - (d) Northern Ireland,
- there is a different member of the Panel capable of representing the interests and opinions of persons living in that part of the United Kingdom.
- (4) In appointing persons to be members of the Consumer Panel, OFCOM must secure, so far as practicable, that the Panel are able to give informed advice about matters referable to each of the following—
- (a) the interests of persons living in rural areas;
  - (b) the interests of persons living in urban areas;
  - (c) the interests of small businesses;
  - (d) the interests of disadvantaged persons, persons with low incomes and persons with disabilities; and
  - (e) the interests of the elderly.

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- (5) The validity of any proceedings of the Consumer Panel shall not be affected by any failure by OFCOM to comply with subsection (3) or (4).
- (6) It shall be the duty of the Consumer Panel, in carrying out their functions, to have regard to the following interests—
  - (a) the interests of persons from the different parts of the United Kingdom; and
  - (b) the interests specified in subsection (4).
- (7) A person shall be disqualified from being the chairman or a member of the Consumer Panel if he is a member or employee of OFCOM.
- (8) The chairman and every member of the Consumer Panel—
  - (a) shall be appointed for a fixed period specified in the terms of his appointment but shall be eligible for re-appointment at the end of that period; and
  - (b) may at any time be removed from the Panel by a notice given by OFCOM with the approval of the Secretary of State.
- (9) OFCOM may pay to the chairman and to any other member of the Consumer Panel such remuneration and allowances as OFCOM consider appropriate.

## **18 Committees and other procedure of the Consumer Panel**

- (1) The Consumer Panel may make such arrangements as they think fit for committees established by the Panel to give advice to them about matters relating to the carrying out of the Panel's functions.
- (2) The Consumer Panel may make such other arrangements for regulating their own procedure, and for regulating the procedure of the committees established by them, as they think fit.
- (3) Those arrangements may include arrangements as to quorums and as to the making of decisions by a majority.
- (4) The committees established by the Panel may include committees the membership of which includes persons (including persons constituting a majority of the committee) who are not members of the Panel.
- (5) The membership of every committee established by the Consumer Panel must contain at least one person who is a member of the Panel.
- (6) Where a person who is not a member of the Consumer Panel is a member of a committee established by the Panel, OFCOM may pay to that person such remuneration and expenses as OFCOM may determine.

## **19 Power to amend remit of Consumer Panel**

- (1) The Secretary of State may by order modify subsection (3) of section 16 so as to add to the matters about which the Consumer Panel are required to be able to give advice.
- (2) Before making an order under this section the Secretary of State must consult OFCOM and such other persons as he thinks fit.
- (3) 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.

- (4) The power to amend or revoke an order under this section does not include power to provide for a matter to cease to be a matter about which the Consumer Panel are required to be able to give advice.

#### *Advisory committees*

### **20 Advisory committees for different parts of the United Kingdom**

- (1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee for each of the following parts of the United Kingdom—
- (a) England;
  - (b) Wales;
  - (c) Scotland; and
  - (d) Northern Ireland.
- (2) Each committee shall consist of—
- (a) a chairman appointed by OFCOM; and
  - (b) such number of other members appointed by OFCOM as OFCOM think fit.
- (3) In appointing a person in accordance with this section to be a member of a committee, OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee has been established.
- (4) The function of each committee shall be to provide advice to OFCOM (including other committees established by OFCOM) about the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee has been established.
- (5) A committee established under this section may also, at the request of the Consumer Panel, provide advice about those interests and opinions to the Consumer Panel.
- (6) The consent of OFCOM are required for the giving of advice under subsection (5).
- (7) In this section “communications matters” has the same meaning as in section 3.

### **21 Advisory committee on elderly and disabled persons**

- (1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee to provide the advice specified in this section.
- (2) The committee shall consist of—
- (a) a chairman appointed by OFCOM; and
  - (b) such number of other members appointed by OFCOM as OFCOM think fit.
- (3) In appointing persons to be members of the committee, OFCOM must have regard to the desirability of ensuring that the members of the committee include—

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- (a) persons who are familiar with the needs of the elderly; and
  - (b) persons who are familiar with the needs of persons with disabilities.
- (4) The function of the committee shall be to provide advice to OFCOM (including other committees established by OFCOM) about the interests, in relation to communications matters, of—
- (a) the elderly; and
  - (b) persons with disabilities.
- (5) The committee may also, at the request of the Consumer Panel, provide advice about those interests to the Consumer Panel.
- (6) The consent of OFCOM are required for the giving of advice under subsection (5).
- (7) In this section “communications matters” has the same meaning as in section 3.

*International matters*

**22 Representation on international and other bodies**

- (1) It shall be the duty of OFCOM to do, as respects the United Kingdom, such of the following things as they are required to do by the Secretary of State—
- (a) provide representation on behalf of Her Majesty’s Government in the United Kingdom on international and other bodies having communications functions;
  - (b) become or serve as a member of an international or other body having such functions;
  - (c) subscribe to such a body;
  - (d) provide representation on behalf of Her Majesty’s Government in the United Kingdom at international meetings about communications.
- (2) OFCOM shall also have the power, if requested to do so by the Secretary of State, to do one or more of those things as respects any of the Channel Islands, the Isle of Man or a British overseas territory.
- (3) It shall be the duty of OFCOM to carry out their functions under this section in accordance with such general or specific directions as may be given to them by the Secretary of State.
- (4) The Secretary of State—
- (a) is not entitled to direct OFCOM to comply with a request made under subsection (2); but
  - (b) may give directions about how OFCOM are to carry out any representative role that they undertake in accordance with such a request.
- (5) In this section—
- “communications functions” means—
- (a) functions relating to the use of the electro-magnetic spectrum for wireless telegraphy;
  - (b) functions relating to the regulation of television or radio broadcasting or the provision of television and radio services; and
  - (c) any other function which relates to, or is connected with, a matter in respect of which OFCOM have functions;

“international meetings about communications” means international meetings relating to, or to matters connected with, one or more of the following—

- (a) the use of the electro-magnetic spectrum for wireless telegraphy;
- (b) the regulation of television or radio broadcasting or of the provision of television and radio services;
- (c) any other matter in respect of which OFCOM have functions.

(6) In relation to—

- (a) a part of the British Islands outside the United Kingdom, or
- (b) a British overseas territory,

the references in subsection (5) to matters in respect of which OFCOM have functions include references to matters corresponding, in the case of that part of those Islands or of that territory, to matters in respect of which OFCOM’s functions are confined to the United Kingdom.

(7) In subsection (5) “television or radio broadcasting” includes the provision by means other than broadcasting of services similar to those provided by television or radio broadcasts.

## **23 Directions for international purposes in respect of broadcasting functions**

(1) This section applies to—

- (a) OFCOM’s functions under the enactments relating to broadcasting; and
- (b) the matters in relation to which those functions are conferred.

(2) It shall be the duty of OFCOM—

- (a) to carry out those functions in accordance with any general or specific directions given to them by the Secretary of State for the purpose mentioned in subsection (3); and
- (b) to carry out such other functions in relation to the matters to which this section applies as they are required to carry out by any general or specific directions so given.

(3) The Secretary of State is not to give a direction under this section except for the purpose of securing compliance, in relation to a matter to which this section applies, with an international obligation of the United Kingdom.

(4) A direction under this section must be contained in an order made by the Secretary of State.

(5) In this section “the enactments relating to broadcasting” means—

- (a) the 1990 Act;
- (b) the 1996 Act;
- (c) Part 3 of this Act; and
- (d) the other provisions of this Act so far as relating to the 1990 Act, the 1996 Act or that Part.

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### *General information functions*

#### **24 Provision of information to the Secretary of State**

- (1) It shall be the duty of OFCOM to comply with a direction by the Secretary of State to provide him with information falling within subsection (2).
- (2) The information that may be the subject of a direction under this section is any information reasonably required by the Secretary of State for the purpose of enabling him to secure compliance with an international obligation of the United Kingdom.
- (3) Information that is required to be provided by a direction under this section must be provided in such manner and at such times as may be required by the direction.

#### **25 Community requirement to provide information**

- (1) This section applies if—
  - (a) the European Commission requires OFCOM to provide it with information for the purpose of enabling it to perform any of its functions in relation to electronic communications networks, electronic communications services or associated facilities; and
  - (b) the information is information obtained by OFCOM in the course of carrying out any of their functions under—
    - (i) Part 2; or
    - (ii) the enactments relating to the management of the radio spectrum that are not contained in that Part.
- (2) It shall be the duty of OFCOM to comply with the requirement.
- (3) If information provided to the European Commission under this section has been obtained by OFCOM from a person who is or, at the time the information was obtained from him, was—
  - (a) a communications provider, or
  - (b) a person making associated facilities available,OFCOM must notify him that they have provided the information to the Commission.
- (4) It shall be for OFCOM to determine the manner in which a notification is given under subsection (3).

#### **26 Publication of information and advice for consumers etc.**

- (1) OFCOM may arrange for the publication of such information and advice about matters in relation to which they have functions as it appears to them to be appropriate to make available to the persons mentioned in subsection (2).
- (2) Those persons are—
  - (a) the customers of communications providers;
  - (b) the customers of persons who make associated facilities available;
  - (c) persons who use electronic communications networks, electronic communications services or associated facilities; and
  - (d) persons to whom radio and television services are provided or who are otherwise able or likely to take advantage of any of those services.



- (3) In arranging for the publication of information or advice under this section, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (4) and (5).
- (4) 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.
- (5) 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.
- (6) The publication of information or advice under this section must be in such manner as OFCOM consider appropriate.

#### *Employment in broadcasting*

### **27 Training and equality of opportunity**

- (1) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting the development of opportunities for the training and retraining of persons—
  - (a) for employment by persons providing television and radio services; and
  - (b) for work in connection with the provision of such services otherwise than as an employee.
- (2) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting equality of opportunity in relation to both—
  - (a) employment by those providing television and radio services; and
  - (b) the training and retraining of persons for such employment.
- (3) It shall also be the duty of OFCOM, in relation to such employment, training and retraining, to take all such steps as they consider appropriate for promoting the equalisation of opportunities for disabled persons.
- (4) The reference in subsection (2) to equality of opportunity is a reference to equality of opportunity—
  - (a) between men and women; and
  - (b) between persons of different racial groups.
- (5) In this section—

“disabled” has the same meaning as in the Disability Discrimination Act 1995 (c. 50);

“racial group” has the same meaning as in the Race Relations Act 1976 (c. 74) or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)).
- (6) The Secretary of State may by order amend subsection (4) by adding any other form of equality of opportunity that he considers appropriate.

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- (7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### *Charging*

## **28 General power to charge for services**

- (1) OFCOM may provide a service to which this section applies to any person on such terms as to the making of payments to OFCOM—
- (a) as they may determine in advance; or
  - (b) as may be agreed between that person and OFCOM.
- (2) This section applies to a service which is provided by OFCOM to a person in the course of carrying out their functions and is neither—
- (a) a service which OFCOM are under a duty to provide to that person; nor
  - (b) one in respect of which express provision is made by or under an enactment for authorising or forbidding the payment of fees or charges.
- (3) In this section references to providing a service to a person include references to a service consisting in—
- (a) the giving of advice to that person;
  - (b) the entry of his particulars in a register or other record kept by OFCOM otherwise than in pursuance of an express statutory duty to keep the register or record; or
  - (c) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

### *Guarantees*

## **29 Secretary of State guarantees for OFCOM borrowing**

- (1) The Secretary of State may guarantee—
- (a) the repayment of the principal of any borrowing by OFCOM;
  - (b) the payment of interest on any such borrowing; and
  - (c) the discharge of other financial obligations incurred by OFCOM in connection with any such borrowing.
- (2) The power of the Secretary of State to give a guarantee under this section is a power (subject to subsection (3)) to give it in such manner and on such conditions as he thinks fit.
- (3) The Secretary of State must not give a guarantee under this section if the aggregate of—
- (a) the amounts that he may be required to pay for fulfilling that guarantee, and
  - (b) the amounts that he may be required to pay for fulfilling other guarantees previously given under this section and still in force,
- exceeds £5 million.

- (4) The Secretary of State may by order substitute another amount for the amount for the time being specified in subsection (3).
- (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 the House of Commons.
- (6) Immediately after a guarantee is given under this section, the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (7) Where any sum is paid by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before each House of Parliament as soon as practicable after the end of each of the financial years—
  - (a) beginning with the one in which the sum is paid; and
  - (b) ending with the one in which OFCOM's liabilities under subsection (8) in respect of that sum are finally discharged.
- (8) If sums are paid by the Secretary of State in fulfilment of a guarantee given under this section OFCOM must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may determine, on amounts outstanding under this subsection.
- (9) Payments to the Secretary of State under subsection (8) must be made at such times and in such manner as he may determine.

*Provisions supplemental to transfer of functions*

**30 Transfers of property etc. from pre-commencement regulators**

- (1) The Secretary of State may, by a direction to any of the pre-commencement regulators, require that regulator to make one or more schemes for the transfer from that regulator to OFCOM of such of the regulator's property, rights and liabilities as may be specified or described in the direction.
- (2) Where a pre-commencement regulator is required to make a scheme, the scheme must be made by such date as may be specified in the direction.
- (3) Before making a scheme in pursuance of a direction under subsection (1), a pre-commencement regulator must consult OFCOM.
- (4) A pre-commencement regulator who makes a scheme in pursuance of a direction under subsection (1) shall submit that scheme to the Secretary of State for approval.
- (5) A scheme that is required to be so submitted shall have effect only if, and to the extent that, it is approved by the Secretary of State.
- (6) The Secretary of State, in approving a scheme, may do so subject to such modifications as he thinks fit.
- (7) Where the Secretary of State approves a scheme subject to modifications specified by him, it shall have effect with those modifications.

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

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- (8) A scheme approved by the Secretary of State under this section shall come into force either—
- (a) if no time is appointed under paragraph (b), at the time when the approval is given; or
  - (b) if the Secretary of State appoints a later time for the coming into force of the scheme (whether when approving the scheme or by subsequently varying a time appointed under this paragraph), at that later time.
- (9) Where a scheme is submitted to the Secretary of State under this section, he must—
- (a) consult OFCOM about any proposal of his to approve the scheme; and
  - (b) consult both OFCOM and the pre-commencement regulator in question about any modifications subject to which he proposes to give his approval, or about any proposal of his to refuse approval.
- (10) The Secretary of State may, after consulting OFCOM, himself make a scheme for the transfer of property, rights and liabilities—
- (a) from a pre-commencement regulator to OFCOM; or
  - (b) from himself to OFCOM;
- and such a scheme shall come into force on such day as the Secretary of State may appoint (whether in the scheme or subsequently).
- (11) The Secretary of State is not to make a scheme for the transfer of property, rights and liabilities from a pre-commencement regulator to OFCOM unless—
- (a) that regulator has failed to comply with a direction under subsection (1); or
  - (b) that regulator has complied with such a direction by submitting a scheme to the Secretary of State that he has decided not to approve (with or without modifications).
- (12) Schedule 2 (which makes further provision about schemes under this section) shall have effect.

### **31 Transitional functions and abolition of pre-commencement regulators**

- (1) It shall be the duty of the pre-commencement regulators to take all such steps as are necessary or expedient for ensuring that OFCOM are able effectively to carry out OFCOM's functions from the time when they are vested in OFCOM.
- (2) The pre-commencement regulators, in taking those steps, must comply with every direction given to them by the Secretary of State.
- (3) The pre-commencement regulators and OFCOM shall each have a duty to provide the Secretary of State with all such information and assistance as he may require for the purposes of, or in connection with—
  - (a) his power to give directions under subsection (1) of section 30; and
  - (b) his powers and duties in relation to the approval and making of schemes under that section.
- (4) On such day as the Secretary of State may by order appoint—
  - (a) the office of the Director General of Telecommunications shall be abolished; and
  - (b) the Broadcasting Standards Commission, the Independent Television Commission and the Radio Authority shall cease to exist.

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

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- (5) Section 54 of the Telecommunications Act 1984 (c. 12) (which provides for the establishment of advisory bodies) shall cease to have effect; and each of the bodies established under that section shall cease to exist on such day as the Secretary of State may by order appoint.
- (6) Different days may be appointed under this section for the Director General of Telecommunications and for each of the different bodies mentioned in subsections (4) (b) and (5).