



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Privileged supplier conditions

77 Imposition of privileged supplier conditions

- (1) It shall be the duty of OFCOM to secure that privileged supplier conditions containing all such provision falling within subsection (3) as they consider appropriate are applied to every public communications provider to whom this section applies.
- (2) This section applies to every public communications provider who—
 - (a) enjoys special or exclusive rights in relation to the provision of any non-communications services; and
 - (b) is not such a provider in respect only of associated facilities.
- (3) The provision that may be contained in a condition set under section 45 as a privileged supplier condition is any provision that OFCOM consider appropriate for any one or more of the following purposes—
 - (a) requiring the provider to whom it applies to keep separate accounts in relation to his public electronic communications network or public electronic communications service and other matters;
 - (b) requiring that provider to submit the accounts of the different parts of his undertaking, and any financial report relating to a part of that undertaking, to a qualified auditor for auditing;
 - (c) requiring the accounts of the different parts of his undertaking to be published;

Changes to legislation: Communications Act 2003, Cross Heading: Privileged supplier conditions is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (d) securing, by means other than the keeping of separate accounts, the structural separation of the different parts of his undertaking.
- (4) OFCOM are not required under this section to apply a condition to a person where they are satisfied that that person has an annual turnover in relation to all his communications activities that is less than [^{F1}£45 million].
- (5) Where in a case falling within subsection (4) OFCOM are not required to apply a privileged supplier condition to a person, they may apply such a condition to him if they think fit.
- (6) The reference in subsection (4) to a person’s communications activities is a reference to any activities of his that consist in, or are connected with, either or both of the following—
- (a) the provision of any one or more electronic communications networks;
 - (b) the provision of any one or more electronic communications services.
- (7) The making, for the purposes of subsection (4), of—
- (a) a determination of the period in respect of which a person’s annual turnover in relation to any activities is computed, and
 - (b) a determination of the amount in [^{F2}sterling] of that turnover for any period, must be in accordance with such rules as OFCOM consider to be reasonable.
- (8) OFCOM must publish any rules made by them for the purposes of subsection (7) in such manner as they consider appropriate for bringing them to the attention of the persons who, in their opinion, are likely to be affected by them.
- (9) In this section—
- “non-communications services”, in relation to a person, means services other than those consisting in, or connected with, the provision by him of—
- (a) an electronic communications network; or
 - (b) an electronic communications service;
- [^{F3}“qualified auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
 - (b) if the appointment to carry out such auditing as is mentioned in subsection (3)(b) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement);]

“special or exclusive rights” has the same meaning as in [^{F4}Article 106 of the Treaty on the Functioning of the European Union] .

Textual Amendments

- F1** Words in s. 77(4) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 22(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in s. 77(7)(b) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 22(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in s. 77(9) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 30(3)** (with arts. 6, 11, 12)

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- F4** Words in s. 77(9) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

Commencement Information

- I1** S. 77 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I2** S. 77 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)