



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *Regulation of premium rate services*

#### **120 Conditions regulating premium rate services**

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

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

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

## **121 Approval of code for premium rate services**

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

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

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

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

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

### **123 Enforcement of s. 120 conditions**

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

### **124 Suspending service provision for contraventions of s. 120 conditions**

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

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- (a) that he is, or has been, in contravention of conditions set under section 120 in respect of a premium rate service;
  - (b) that the circumstances of the contravention make it appropriate for OFCOM to suspend or restrict the provision of premium rate services provided by the contravening provider without the conditions set out in subsection (1) being satisfied; and
  - (c) that in those circumstances the giving of the direction is urgently required for reasons of public policy.
- (3) A direction under this section is—
- (a) a direction to the contravening provider to secure the suspension of the provision of premium rate services provided by him; or
  - (b) a direction requiring him to secure compliance with restrictions, set out in the direction, on the provision of such services.
- (4) A direction under this section—
- (a) must specify the services to which it relates; and
  - (b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (5) A direction under this section—
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.
- (6) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or
  - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (7) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions—
- (a) with effect from such time as they may direct;
  - (b) subject to compliance with such requirements as they may specify; and
  - (c) to such extent and in relation to such services as they may determine.
- (8) Sections 102 and 103 apply in the case of a direction under this section as they apply in the case of a direction under section 100, but as if references in section 103(1) to an electronic communications network or electronic communications service were references to a premium rate service.
- (9) For the purposes of this section there are repeated contraventions by a person of conditions set under section 120 to the extent that—
- (a) in the case of a previous notification given to that person under section 94 (as applied by section 123), OFCOM have determined for the purposes of section 95(2) or 96(2) (as so applied) that such a contravention did occur; and

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- (b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a condition set under section 120.
- (10) For the purposes of this section the seriousness of repeated contraventions of conditions set under section 120 has to be determined by reference to the seriousness of the contraventions of the approved code or order by reference to which the conditions have effect.