



# Communications Act 2003

## 2003 CHAPTER 21

### PART 3

#### TELEVISION AND RADIO SERVICES

### CHAPTER 4

#### REGULATORY PROVISIONS

##### *Programme and fairness standards for television and radio*

#### **319 OFCOM's standards code**

- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.
- (2) The standards objectives are—
  - (a) that persons under the age of eighteen are protected;
  - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
  - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
  - (d) that news included in television and radio services is reported with due accuracy;
  - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
  - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;

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- (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
  - (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
  - (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
  - (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
  - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
  - (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters—
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
  - (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
  - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
  - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
  - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
  - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include—
- (a) minimum standards applicable to all programmes included in television and radio services; and
  - (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve—
- (a) any improper exploitation of any susceptibilities of the audience for such a programme; or

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- (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.
- (8) In this section “news” means news in whatever form it is included in a service.

### **320 Special impartiality requirements**

- (1) The requirements of this section are—
  - (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);
  - (b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;
  - (c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.
- (2) Those matters are—
  - (a) matters of political or industrial controversy; and
  - (b) matters relating to current public policy.
- (3) Subsection (1)(a) does not require—
  - (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
  - (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.
- (4) For the purposes of this section—
  - (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
  - (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) OFCOM’s standards code shall contain provision setting out the rules to be observed in connection with the following matters—
  - (a) the application of the requirement specified in subsection (1)(b);
  - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
  - (c) the application of the requirement in subsection (1)(c).

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- (6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately)—
- (a) matters of major political or industrial controversy, and
  - (b) major matters relating to current public policy,
- as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.
- (7) In this section “national radio service” and “local radio service” mean, respectively, a sound broadcasting service which is a national service within the meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

### **321 Objectives for advertisements and sponsorship**

- (1) Standards set by OFCOM to secure the objectives mentioned in section 319(2)(a) and (g) to (j)—
- (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and
  - (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances).
- (2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is—
- (a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
  - (b) an advertisement which is directed towards a political end; or
  - (c) an advertisement which has a connection with an industrial dispute.
- (3) For the purposes of this section objects of a political nature and political ends include each of the following—
- (a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;
  - (b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;
  - (c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;
  - (d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;
  - (e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
  - (f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;
  - (g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.
- (4) OFCOM—
- (a) shall, in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and

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- (b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable OFCOM to impose requirements with respect to any of those matters that go beyond the provisions of OFCOM's standards code.
- (5) OFCOM must, from time to time, consult the Secretary of State about—
- (a) the descriptions of advertisements that should not be included in programme services; and
  - (b) the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services.
- (6) The Secretary of State may give OFCOM directions as to the matters mentioned in subsection (5); and it shall be the duty of OFCOM to comply with any such direction.
- (7) Provision included by virtue of this section in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of—
- (a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or
  - (b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 or by paragraph 18 of Schedule 12 to this Act.
- (8) In this section “programme service” does not include a service provided by the BBC.

### **322 Supplementary powers relating to advertising**

- (1) The regulatory regime for each of the following—
- (a) every television programme service licensed by a Broadcasting Act licence,
  - (b) the public teletext service, and
  - (c) every other teletext service so licensed that consists in an additional television service or a digital additional television service,
- includes a condition requiring the person providing the service to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (2).
- (2) Those matters are—
- (a) the maximum amount of time to be given to advertisements in any hour or other period;
  - (b) the minimum interval which must elapse between any two periods given over to advertisements;
  - (c) the number of such periods to be allowed in any programme or in any hour or day; and
  - (d) the exclusion of advertisements from a specified part of a licensed service.
- (3) Directions under this section—
- (a) may be either general or specific;
  - (b) may be qualified or unqualified; and
  - (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

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- (4) In giving a direction under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

### **323 Modification of matters to be taken into account under s. 319**

- (1) The Secretary of State may by order modify the list of matters in section 319(4) to which OFCOM are to have regard when setting or revising standards.
- (2) Before making an order under this section, the Secretary of State must consult OFCOM.
- (3) No order is to be made containing provision authorised by subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### **324 Setting and publication of standards**

- (1) Before setting standards under section 319, OFCOM must publish, in such manner as they think fit, a draft of the proposed code containing those standards.
- (2) After publishing the draft code and before setting the standards, OFCOM must consult every person who holds a relevant licence and such of the following as they think fit—
- (a) persons appearing to OFCOM to represent the interests of those who watch television programmes;
  - (b) persons appearing to OFCOM to represent the interests of those who make use of teletext services; and
  - (c) persons appearing to OFCOM to represent the interests of those who listen to sound programmes.
- (3) After publishing the draft code and before setting the standards, OFCOM must also consult—
- (a) the Welsh Authority, about so much of the draft code as relates to television programme services;
  - (b) the BBC, about so much of the draft code as contains standards other than those for advertising or sponsorship; and
  - (c) such of the persons mentioned in subsection (4) as OFCOM think fit, about so much of the draft code as contains standards for advertising or sponsorship.
- (4) Those persons are—
- (a) persons appearing to OFCOM to represent the interests of those who will have to take account of the contents of the proposed standards for advertising or sponsorship;
  - (b) bodies and associations appearing to OFCOM to be concerned with the application of standards of conduct in advertising; and
  - (c) professional organisations appearing to OFCOM to be qualified to give relevant advice in relation to the advertising of particular products.
- (5) If it appears to OFCOM that a body exists which represents the interests of a number of the persons who hold relevant licences, they may perform their duty under subsection (2) of consulting such persons, so far as it relates to the persons whose interests are so represented, by consulting that body.

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- (6) OFCOM may set standards under section 319 either—
  - (a) in the terms proposed in a draft code published under subsection (1); or
  - (b) with such modifications as OFCOM consider appropriate in the light of the consultation carried out as a result of subsections (2) to (5).
- (7) Subsections (1) to (6) apply to a proposal by OFCOM to revise standards set under section 319 as they apply to a proposal to set such standards.
- (8) Where OFCOM set standards under section 319, they must publish the code containing the standards in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the standards.
- (9) Where OFCOM revise standards set under section 319, they shall so publish the code containing the standards as revised.
- (10) Where OFCOM publish a code under subsection (8) or (9), they shall send a copy of it—
  - (a) to the Secretary of State;
  - (b) except in the case of a code containing standards for advertising or sponsorship, to the BBC; and
  - (c) if the code relates to television programme services, to the Welsh Authority.
- (11) A code (or draft code) contains standards for advertising or sponsorship for the purposes of this section to the extent that it sets standards under section 319 for securing any of the objectives mentioned in any of paragraphs (g) to (k) of subsection (2) of that section.
- (12) In this section “relevant licence”, in relation to a draft code, means—
  - (a) to the extent that the draft code relates to
    - (i) television programme services,
    - (ii) the public teletext service, or
    - (iii) an additional television service,a licence under Part 1 of the 1990 Act (independent television services), under section 18 of the 1996 Act (digital television programme services) under section 25 of that Act (digital additional television services) or under section 219 of this Act; and
  - (b) to the extent that the draft code relates to radio programme services, any licence under Part 3 of the 1990 Act (independent radio services), under section 60 of the 1996 Act (digital sound programme service) or under section 64 of that Act (digital additional services).

### **325 Observance of standards code**

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing—
  - (a) that standards set under section 319 are observed in the provision of that service; and
  - (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.
- (2) It shall be the duty of OFCOM themselves to establish procedures for the handling and resolution of complaints about the observance of standards set under section 319.

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- (3) OFCOM may from time to time make a report to the Secretary of State on any issues with respect to OFCOM's standards code which—
- (a) have been identified by them in the course of carrying out their functions; and
  - (b) appear to them to raise questions of general broadcasting policy.
- (4) The conditions of a licence which is granted by OFCOM for a programme service must, for the purpose of securing compliance—
- (a) with OFCOM's standards code, so far as it relates to advertising and the sponsorship of programmes, and
  - (b) with any such requirements as are mentioned in section 321(4) which relate to advertising and sponsorship but go beyond that code,
- include a condition requiring the licence holder to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (5).
- (5) Those matters are—
- (a) the exclusion from the service of a particular advertisement, or its exclusion in particular circumstances;
  - (b) the descriptions of advertisements and methods of advertising to be excluded from the service (whether generally or in particular circumstances); and
  - (c) the forms and methods of sponsorship to be excluded from the service (whether generally or in particular circumstances).
- (6) OFCOM's powers and duties under this section are not to be construed as restricting any power of theirs, apart from this section—
- (a) to include conditions with respect to the content of programmes included in any service in the licence to provide that service; or
  - (b) to include conditions in a licence requiring the holder of a licence to comply with directions given by OFCOM or by any other person.

### **326 Duty to observe fairness code**

The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing observance—

- (a) in connection with the provision of that service, and
- (b) in relation to the programmes included in that service,

of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

### **327 Standards with respect to fairness**

- (1) Part 5 of the 1996 Act (functions of the Broadcasting Standards Commission which are transferred to OFCOM so far as they relate to codes of practice and complaints with respect to fairness and privacy) shall be amended as follows.
- (2) No person shall be entitled to make a standards complaint under that Part at any time after the coming into force of this section, and no person shall be required to entertain any such complaint that is so made.
- (3) In section 115 (consideration of fairness complaint)—



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- (a) in subsection (4) (matters to be provided in response to a fairness complaint), after paragraph (d) there shall be inserted—
    - “(da) to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the relevant person, as may be specified or described by OFCOM;”
  - (b) in subsection (7) (requests in relation to which the relevant person is required to secure the compliance of another), after paragraph (c) there shall be inserted—
    - “(ca) a request to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the person requested, as may be specified or described by OFCOM;”.
- (4) For subsection (7) of section 119 (directions on determination of fairness complaint) there shall be substituted—
- “(7) The regulatory regime for every licensed service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with every direction given to him under this section.
  - (7A) Section 263 of the Communications Act 2003 applies in relation to conditions included by virtue of subsection (7) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act.
  - (7B) It is hereby declared that, where—
    - (a) OFCOM exercise their powers under this Part to adjudicate upon a fairness complaint or to give a direction under subsection (1), and
    - (b) it appears to them that the matters to which the complaint in question relates consist in or include a contravention of the conditions of the licence for a licensed service,the exercise by OFCOM of their powers under this Part is not to preclude the exercise by them of their powers under any other enactment in respect of the contravention.
  - (7C) Where OFCOM are proposing to exercise any of their powers in respect of a contravention of a licence condition in a case in which the contravention relates to matters that have been the subject-matter of a fairness complaint—
    - (a) OFCOM may have regard, in the exercise of those powers, to any matters considered or steps taken by them for the purpose of adjudicating upon that complaint and to any direction given by them under this section; but
    - (b) steps taken for the purposes of this Part do not satisfy a requirement to give the licence holder in relation to whom those powers are to be exercised a reasonable opportunity, before they are exercised, of making representations to OFCOM.”
- (5) For subsection (2) of section 120 of that Act (reports on supplementary action taken in response to findings on fairness complaint) there shall be substituted—
- “(2) Where the relevant programme was included in a licensed service, the licence holder shall send to OFCOM a report of any supplementary action taken by

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him or by any other person responsible for the making or provision of the relevant programme.”

**328 Duty to publicise OFCOM’s functions in relation to complaints**

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing that—
  - (a) the procedures which, by virtue of section 325, are established and maintained for handling and resolving complaints about the observance of standards set under section 319, and
  - (b) their functions under Part 5 of the 1996 Act in relation to that service, are brought to the attention of the public (whether by means of broadcasts or otherwise).
- (2) Conditions included in a licence by virtue of subsection (1) may require the holder of the licence to comply with every direction given to him by OFCOM for the purpose mentioned in that subsection.