

Communications Act 2003 – Proposed amendments to implement the revised EU Electronic Communications Framework.

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.

- (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;
 - (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;
 - (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) (OFCEM's annual report) for a financial year must contain a summary of the manner in which, in that year, OFCEM 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 OFCEM to have been of unusual importance.

(12) Those matters are--

- (a) a major change in the activities carried on by OFCEM;
- (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 OFCEM 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 OFCEM have functions;

"general duties", in relation to OFCEM, 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--
- (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.

(6A) The fourth Community requirement does not apply to--

(a) the imposition, in relation to a wireless telegraphy licence, of a limitation of a kind falling within section 9ZA(1) of the Wireless Telegraphy Act 2006;

(b) the review, variation or removal of such a limitation.

(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~~

(aa) efficient investment and innovation; and

(b) the maximum benefit for the persons who are customers of communications providers and of persons who make ~~such associated~~ 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~~ and

(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~~

(iia) the European Conference of Postal and Telecommunications Administrations; and

(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.

(13) In this section and sections 4A and 5, "the Framework Directive" has the same meaning as in Chapter 1 of Part 2.

Duty to take account of European Commission recommendations for harmonisation

4A.—(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) In carrying out those functions, OFCOM must take due account of all applicable recommendations issued (whether before or after the coming into force of this section) by the European Commission under Article 19(1) of the Framework Directive.

(3) Where OFCOM decide not to follow such a recommendation they must notify the Commission of their decision, and of the reasons for it.

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.

(3A) The Secretary of State may not give a direction under this section in respect of a function that Article 3(3a) of the Framework Directive requires OFCOM to exercise without seeking or taking instructions from any other body

(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.

(4A) Before giving a direction under this section, the Secretary of State must take due account of the desirability of not favouring—

(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.

(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.

(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
 - (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.

(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
- (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;
 - (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.
- (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--

(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;
- (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 2006) 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;
 - (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.

- (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.

(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.

(4A) The Secretary of State may direct OFCOM to appoint as a member of the Consumer Panel a person specified by the Secretary of State who--

- (a) is a non-executive member of the National Consumer Council, and
- (b) is nominated for the purposes of this subsection by the National Consumer Council after consultation with OFCOM.

(4B) Only one person may, at any time, be a member of the Consumer Panel appointed in accordance with a direction under subsection (4A); but that does not prevent OFCOM appointing as a member of the Consumer Panel any person who is also a member of the National Consumer Council.

(4C) A person appointed in accordance with a direction under subsection (4A) ceases to be a member of the Panel on ceasing to be a non-executive member of the National Consumer Council.

(5) The validity of any proceedings of the Consumer Panel shall not be affected by any failure by OFCOM to comply with subsections (3) to (4A).

(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 is 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--
- (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 is 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.

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~~**must** 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;
 - (ba) any person affected by the application of the electronic communications code (within the meaning of section 106(1));
 - (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 Equality Act 2010 or, in Northern Ireland, the Disability Discrimination Act 1995 (c 50);
- "racial group" has the same meaning as in the Equality Act 2010 or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (SI 1997/869 (NI 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.
- (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.
- (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.
- (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).

Part 2

Networks, Services and the Radio Spectrum

Chapter 1

Electronic Communications Networks and Services

Preliminary

32 Meaning of electronic communications networks and services

- (1) In this Act "electronic communications network" means--
- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
 - (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals--
 - (i) apparatus comprised in the system;
 - (ii) apparatus used for the switching or routing of the signals; ~~and~~
 - (iii) software and stored data; ~~and-~~
 - (iv) (except for the purposes of sections 125 to 127) other resources, including network elements which are not active.

(2) In this Act "electronic communications service" means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.

~~(3) In this Act "associated facility" means a facility which--
 (a) is available for use in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility available); and
 (b) is so available for the purpose of--
 (i) making the provision of that network or service possible;
 (ii) making possible the provision of other services provided by means of that network or service; or
 (iii) supporting the provision of such other services.~~

(3) In this Act "associated facility" means a facility, element or service which is available for use, or has the potential to be used, in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility, element or service available) for the purpose of--

(a) making the provision of that network or service possible;

(b) making possible the provision of other services provided by means of that network or service; or

(c) supporting the provision of such other services.

(4) In this Act--

(a) references to the provision of an electronic communications network include references to its establishment, maintenance or operation;

(b) references, where one or more persons are employed or engaged to provide the network or service under the direction or control of another person, to the person by whom an electronic communications network or electronic communications service is provided are confined to references to that other person; and

(c) references, where one or more persons are employed or engaged to make facilities available under the direction or control of another person, to the person by whom any associated facilities are made available are confined to references to that other person.

(5) Paragraphs (a) and (b) of subsection (4) apply in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.

(6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.

(7) In subsection (2) "a content service" means so much of any service as consists in one or both of the following--

(a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;

(b) the exercise of editorial control over the contents of signals conveyed by means of a such a network.

(8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.

(9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they--

(a) have been installed or stored in order to be used for that purpose; and

- (b) are available to be so used.
- (10) 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.

Notification by providers

33 Advance notification to OFCOM

- (1) A person shall not--
- (a) provide a designated electronic communications network,
 - (b) provide a designated electronic communications service, or
 - (c) make available a designated associated facility,

unless, before beginning to provide it or to make it available, he has given a notification to OFCOM of his intention to provide that network or service, or to make that facility available.

(2) An electronic communications network, electronic communications service or associated facility is designated for the purposes of this section if it is of a description of networks, services or facilities that is for the time being designated by OFCOM as a description of networks, services or facilities for which notification under this section is required.

- (3) A person who has given a notification for the purposes of subsection (1) must, before--
- (a) providing or making available the notified network, service or facility with any significant differences, or
 - (b) ceasing to provide it or to make it available,

give a notification to OFCOM of the differences or (as the case may be) of his intention to cease to provide the network or service or to make the facility available.

- (4) A notification for the purposes of this section must--
- (a) be sent to OFCOM in such manner as OFCOM may require; and
 - (b) contain all such information as OFCOM may require.
- (5) The only information OFCOM may require a notification to contain is--
- (a) a declaration of the relevant proposal of the person giving the notification;
 - (b) the time when it is intended that effect should be given to the relevant proposal;
 - (c) particulars identifying the person giving the notification;
 - (d) particulars identifying one or more persons with addresses in the United Kingdom who, for the purposes of matters relating to the notified network, service or facility, are authorised to accept service at an address in the United Kingdom on behalf of the person giving the notification;

- (e) particulars identifying one or more persons who may be contacted if there is an emergency that is caused by or affects the provision of the notified network, service or facility;
 - (f) addresses and other particulars necessary for effecting service on or contacting each of the persons mentioned in paragraphs (c) to (e).
- (6) The declaration of the relevant proposal that may be required under subsection (5) is whichever of the following is appropriate in the case of the person giving the notification--
- (a) a declaration of his proposal to provide the network or service described in the notification or to make available the facility so described;
 - (b) a declaration of his proposal to make the modifications that are so described of the network, service or facility specified in the notification; or
 - (c) a declaration of his proposal to cease to provide the network or service so specified or to cease to make available the facility so specified.
- (7) Requirements imposed under subsection (4) are not to require a notification by a person to contain particulars falling within subsection (5)(d) in a case in which--
- (a) that person is resident in a member State or has a place of business in a member State;
 - (b) the notification contains a statement under subsection (8);
 - (c) the notification sets out an address in a member State at which service will be accepted by the person who, in accordance with that statement, is authorised to accept it; and
 - (d) OFCOM are satisfied that adequate arrangements exist for effecting service on that person at that address.
- (8) That statement is one which--
- (a) declares that the person authorised, for the purposes of matters relating to the notified network, service or facilities, to accept service on behalf of the person giving the notification is that person himself; or
 - (b) identifies another person who is resident in a member State, or has a place of business in such State, as the person so authorised.
- (9) The reference in subsection (3) to providing or making available a notified network, service or facility with significant differences is a reference to continuing to provide it, or to make it available, after a change in whatever falling within subsection (5)(a) to (f) was last notified to OFCOM under this section.
- (10) References in this section to accepting service at an address are references--
- (a) to accepting service of documents or process at that address; or
 - (b) otherwise to receiving notifications at that address;

and the reference in subsection (7) to effecting service at an address is to be construed accordingly.

- (11) Where a description of electronic communications network, electronic communications service or associated facility is designated for the purposes of this section at a time when a network, service or facility of that description is already being provided or made available by a person--
- (a) that person's obligation under this section to give a notification before beginning to provide or make available that network, service or facility shall have effect as an obligation to give a notification

within such period after the coming into force of the designation as may be specified in the notice in which the designation is contained; and

(b) that notification is to be one stating that that person is already providing the network or service, or making the facility available (rather than that it is his intention to do so).

(12) Subsection (11) has effect subject to any transitional provision--

(a) which is contained in the notification setting out the designation; and

(b) treats a person as having given the notification required by that subsection.

34 Designations and requirements for the purposes of s 33

(1) Before--

(a) making or withdrawing a designation for the purposes of section 33, or

(b) imposing or modifying a requirement under subsection (4) of that section,

OFCOM must consult such of the persons who, in their opinion, are likely to be affected by it as they think fit.

(2) Before making or withdrawing a designation for the purposes of section 33 OFCOM must also consult the Secretary of State.

(3) The way in which a designation for the purposes of section 33 or a requirement under subsection (4) of that section--

(a) is to be made or imposed, or

(b) may be withdrawn or modified,

is by a notice published in such manner as OFCOM consider appropriate for bringing the designation, requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.

(4) A designation for the purposes of section 33 may be framed by reference to any such description of networks, services or facilities, or such other factors, as OFCOM think fit.

(5) Requirements imposed under section 33(4) may make different provision for different cases.

35 Notification of contraventions of s 33

(1) Where OFCOM determine that there are reasonable grounds for believing that a person has contravened section 33, they may give him a notification under this section.

(2) A notification under this section is one which--

(a) sets out the determination made by OFCOM; ~~and~~

~~(b) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).~~

(b) specifies the contravention in respect of which the determination has been made;

(c) specifies the period during which the person notified has an opportunity to make representations;

- (d) specifies information to be provided by the person to OFCOM; and
- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 35A.

~~(3) Those things are--~~

- ~~(a) making representations about the determination; and~~
- ~~(b) providing OFCOM with the information which the notified person should have provided for the purposes of section 33 but has not.~~

~~(4) Subject to subsections (5) to (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.~~

~~(5) OFCOM may, if they think fit, allow a longer period for doing those things either--~~

- ~~(a) by specifying a longer period in the notification; or~~
- ~~(b) by subsequently, on one or more occasions, extending the specified period.~~

~~(6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.~~

~~(7) The person notified shall also have a shorter period if--~~

- ~~(a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;~~
- ~~(b) they have determined that, in those circumstances, a shorter period would be appropriate; and~~
- ~~(c) the shorter period has been specified in the notification.~~

(8) A notification under this section--

- (a) may be given in respect of more than one contravention of section 33; and
- (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(9) Where a notification under this section has been given to a person in respect of a contravention of section 33, OFCOM may give a further notification in respect of the same contravention if, and only if--

- (a) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after a period to which the earlier notification relates; or
- (b) the earlier notification has been withdrawn without a penalty having been imposed by reference to the notified contravention.

~~(10) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if--~~

- ~~(a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of section 33; and~~
- ~~(b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 36(2) or 37(2) that the contravention to which the previous notification related did occur.~~

Penalties for contravention of s 33

35A.—(1) This section applies where a person is given a notification under section 35 which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after –

(a) the giving of a confirmation decision under section 36(4)(c) which requires immediate action; or

(b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be –

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(6) The amount of any other penalty specified in a notification under section 35 is to be such amount not exceeding £10,000 as OFCOM determine to be—

(a) appropriate, and

(b) proportionate to the contravention in respect of which it is imposed.

(7) 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 (6).

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

36 ~~Enforcement notification~~Confirmation decision for contravention of s 33

(1) This section applies where--

(a) a person ("the notified provider") has been given a notification under section 35;

(b) OFCOM have allowed the notified provider an opportunity of making representations about the notified determination; and

(c) the period allowed for the making of the representations has expired.

~~(2) OFCOM may give the notified provider an enforcement notification if they are satisfied--~~

~~(a) that he has, in one or more of the respects notified, been in contravention of section 33; and~~

~~(b) that he has not, during the period allowed under section 35, provided OFCOM with all the information which he should have provided to them to remedy the contravention.~~

(2) OFCOM may—

(a) give the notified provider a decision (a "confirmation decision") confirming the imposition of requirements in accordance with the notification under section 35; or

(b) inform the notified provider that they are satisfied with the notified provider's representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to the notified provider unless, after considering any representations, they are satisfied that the notified provider has, in one or more of the respects notified, been in contravention of section 33.

(3) An enforcement notification is a notification which imposes a requirement on the notified provider to take all such steps for providing OFCOM with that information as may be specified in the notification.

~~(4) A decision of OFCOM to give an enforcement notification to a person--~~

~~(a) must be notified to that person, together with the reasons for the decision, no later than a week after the day on which it is taken; and~~

~~(b) must fix a reasonable period for the taking of the steps required by the notification.~~

(4) A confirmation decision—

(a) must be given to the person without delay;

(b) must contain reasons for the decision;

(c) may require immediate action by the person to comply with requirements imposed by virtue of section 35(2)(d), or may specify a period within which the person must comply with those requirements; and

(d) may require the person to pay –

(i) the penalty specified in the notification under section 35,

(ii) such other lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and

may specify the period within which the penalty is to be paid.

(5) It shall be the duty of a person to whom a ~~enforcement notification~~confirmation decision has been given to comply with ~~any requirement imposed by it.~~

(6) That duty shall be enforceable in civil proceedings by OFCOM--

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c 36); or

(c) for any other appropriate remedy or relief.

(7) A penalty imposed by a confirmation decision—

(a) must be paid to OFCOM; and

(b) if not paid within the period specified by them, is to be recoverable by them accordingly.

~~37 Penalties for contravention of s 33~~

~~(1) This section applies (in addition to section 36) where--~~

~~(a) a person ("the notified provider") has been given a notification under section 35;~~

~~(b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and~~

~~(c) the period allowed for the making of the representations has expired.~~

~~(2) OFCOM may impose a penalty on the notified provider if he--~~

~~(a) has, in one or more of the respects notified, been in contravention of section 33; and~~

~~(b) has not, during the period allowed under section 35, provided OFCOM with all the information which he should have provided to remedy the contravention.~~

~~(3) Where a notification under section 35 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.~~

~~(4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.~~

~~(5) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification given under section 36 in respect of the notified contravention.~~

~~(6) The amount of a penalty imposed under this section is to be such amount not exceeding £10,000 as OFCOM determine to be--~~

~~(a) appropriate; and~~

~~(b) proportionate to the contravention in respect of which it is imposed.~~

~~(7) In making that determination OFCOM must have regard to--~~

~~(a) any representations made to them by the notified provider; and~~

~~(b) any steps taken by him towards complying with his obligations under section 33.~~

~~(8) Where OFCOM impose a penalty on a person under this section, they shall--~~

~~(a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and~~

~~(b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.~~

~~(9) A penalty imposed under this section--~~

~~(a) must be paid to OFCOM; and~~

~~(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.~~

~~(10) 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 (6).~~

~~(11) No order is to be made containing provision authorised by subsection (10) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.~~

Administrative charges imposed on providers

38 Fixing of charges

- (1) A person who, at any time in a charging year, is a person to whom this section applies shall--
- (a) in respect of the network, service or facility provided or made available by him,
 - (b) in respect of the application to him of a universal service condition relating to matters mentioned in section 66(3),
 - (c) in respect of the application to him of an SMP apparatus condition, or
 - (d) in respect of the application of the electronic communications code in his case,

pay to OFCOM the administrative charge (if any) that is fixed by them for the case that is applicable to him.

- (2) This section applies to a person at a time if, at that time, he is--
- (a) providing an electronic communications network of a description which is, at that time, designated for the purposes of this section;
 - (b) providing an electronic communications service of a description which is, at that time, so designated;
 - (c) making available an associated facility of a description which is, at that time, so designated;
 - (d) a person who without being a communications provider is designated in accordance with regulations under section 66;
 - (e) a supplier of apparatus to whom an SMP apparatus condition applies; or
 - (f) a person in whose case the electronic communications code applies by virtue of a direction given under section 106 otherwise than for the purposes of the provision by him of an electronic communications network of a designated description.
- (3) OFCOM are not to fix the administrative charge for a charging year unless--
- (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that OFCOM are proposing to apply in fixing charges under this section for that year; and
 - (b) the charge is fixed in accordance with those charging principles.
- (4) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make--
- (a) that, on a year by year basis, the aggregate amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out the functions mentioned in subsection (5);
 - (b) that the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed;
 - (c) that the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent;
 - (d) that the charges fixed for persons who are liable to charges by reason only of being persons to whom SMP apparatus conditions apply are referable only to things done in, or in connection with, the setting, modification or enforcement of SMP apparatus conditions or the carrying out of the functions mentioned in subsection (6)(l); and

(e) that the charges fixed for persons who are liable to charges by reason only of being persons falling within subsection (2)(f), are referable only to costs incurred in, or in connection with, the carrying out of the functions mentioned in subsection (6)(g) and (l).

(5) Those functions are--

- (a) the relevant Chapter 1 functions;
- (b) the carrying out for a Chapter 1 purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(1)(c) to (f);
- (c) the publication under section 26 of any information or advice that it appears to OFCOM to be appropriate to make available to the persons mentioned in subsection (2)(a) to (c) of that section; and
- (d) the function of taking any steps that OFCOM consider it necessary to take--
 - (i) in preparation for the carrying out of any of the functions mentioned in paragraphs (a) to (c) of this subsection; or
 - (ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.

(6) The relevant Chapter 1 functions are--

- (a) OFCOM's functions under sections 33 to 37 and 44;
- (b) the setting, modification and enforcement of conditions under section 45;
- (c) the supervision, as respects the requirements of sections 33 to 37 and of any such conditions, of communications providers and of persons who make associated facilities available;
- (d) the monitoring of compliance with those requirements and with any such conditions;
- (e) the functions conferred on OFCOM by or under section 55;
- ~~(f) their functions under section 105;~~
- (g) their functions under sections 106 to 119;
- (h) their functions under sections 185 to 191;
- (i) securing international co-operation in relation to the regulation of electronic communications networks, electronic communications services and associated facilities;
- (j) securing the harmonisation and standardisation of the regulation of electronic communications networks, electronic communications services and associated facilities;
- (k) market analysis and any monitoring of the controls operating in the markets for electronic communications networks, electronic communications services and associated facilities;
- (l) OFCOM's functions under this section and sections 39 to 43.

(7) A purpose is a Chapter 1 purpose for the purposes of subsection (5)(b) if it is the purpose of ascertaining the effectiveness of one or more of the following--

- (a) the regulation of the provision of electronic communications networks or electronic communications services;
- (b) the regulation of the making available of associated facilities;
- (c) the mechanisms in place for the handling, by communications providers and by persons making such facilities available, of complaints made to them by consumers in markets for such services or facilities;

- (d) the mechanisms in place for resolving disputes between such consumers and communications providers or persons who make such facilities available.
- (8) OFCOM's power to fix charges for a particular case includes--
- (a) power to provide that the charges in that case are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them;
 - (b) power to provide for different charges to be imposed in that case on different descriptions of persons; and
 - (c) power to provide for particular descriptions of persons falling within subsection (2)(d) to (f) to be excluded from the liability to pay charges in that case.
- (9) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement setting out, in respect of that year--
- (a) the aggregate amounts of the administrative charges for that year that have been received by OFCOM;
 - (b) the aggregate amount of the administrative charges for that year that remain outstanding and are likely to be paid or recovered; and
 - (c) the cost to OFCOM of carrying out the functions mentioned in subsection (5).
- (10) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (9) shall be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (4)(a) in relation to the following year.
- (11) Section 34 applies in relation to the making and withdrawal of a designation for the purposes of this section as it applies to the making and withdrawal of a designation for the purposes of section 33.
- (12) In this section "charging year" means--
- (a) the period beginning with the commencement of this section and ending with the next 31st March; or
 - (b) any subsequent period of twelve months beginning with 1st April.

39 Supplemental provision about fixing charges

- (1) OFCOM's power to fix a charge under section 38--
- (a) is to be exercisable only by the publication or giving of such notification as they consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it; and
 - (b) includes power, by setting it out in that notification, to fix the time at which the charge is to become due to OFCOM.
- (2) A charge fixed under section 38 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which--
- (a) the network, service or facility in respect of which it is fixed is not provided or made available by the person otherwise liable to the charge;
 - (b) the universal service condition in respect of which it is fixed does not apply in that person's case;

- (c) the SMP apparatus condition in respect of which it is fixed does not apply in that person's case; or
 - (d) the electronic communications code does not apply in that person's case.
- (3) Such a charge may also be fixed (subject to subsection (4)) so that it is referable, in whole or in part--
- (a) to the provision or making available of a network, service or facility during a part of the year falling before the fixing of the charge;
 - (b) to the application of a universal service condition to a person for a part of the year so falling;
 - (c) to a person's being a person to whom an SMP apparatus condition applies for a part of the year so falling; or
 - (d) to the application of the electronic communications code in a person's case during a part of the year so falling.
- (4) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both--
- (a) the imposition of the charge, and
 - (b) the amount of the charge,

are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.

- (5) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (6) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement 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 it.
- (7) References in this section to a statement of charging principles are references to a statement by OFCOM of the principles that they are proposing to apply in fixing charges under section 38 for a charging year.
- (8) In this section "charging year" has the same meaning as in section 38.

40 Notification of non-payment of charges

- (1) OFCOM are not entitled to bring proceedings for the recovery from a person of an administrative charge fixed for any year under section 38 unless they have given that person a notification under this section with respect to the amount they are seeking to recover.
- (2) Where OFCOM determine that there are reasonable grounds for believing that a person is in contravention (whether in respect of the whole or a part of a charge) of a requirement to pay such an administrative charge, they may give him a notification under this section.
- (3) A notification under this section is one which--
- (a) sets out the determination made by OFCOM; and
 - (b) specifies the period during which the person notified has an opportunity of ~~doing the things specified in subsection (4)~~ [making representations about the notified determination](#).

~~(4) Those things are--~~

~~(a) making representations about the notified determination; and~~

~~(b) paying the unpaid charge or (as the case may be) the amount outstanding.~~

~~(5) Subject to subsections (6) to (8), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.~~

~~(6) OFCOM may, if they think fit, allow a longer period for doing those things either--~~

~~(a) by specifying a longer period in the notification; or~~

~~(b) by subsequently, on one or more occasions, extending the specified period.~~

~~(7) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.~~

~~(8) The person notified shall also have a shorter period if--~~

~~(a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;~~

~~(b) they have determined that, in those circumstances, a shorter period would be appropriate; and~~

~~(c) the shorter period has been specified in the notification.~~

(9) A notification under this section--

(a) may be given in respect of contraventions of more than one requirement to pay an administrative charge; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(10) Where a notification under this section has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount if, and only if--

(a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates; or

(b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.

~~(11) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if--~~

~~(a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of a requirement to pay an administrative charge; and~~

~~(b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 41(2) that the contravention to which the previous notification related did occur.~~

41 Penalties for non-payment of charges

(1) This section applies where--

(a) a person ("the notified charge payer") has been given a notification under section 40;

(b) OFCOM have allowed the notified charge payer an opportunity of making representations about the notified determination; and

(c) the period allowed for the making of the representations has expired.

(2) OFCOM may impose a penalty on the notified charge payer if he--

- (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under section 38; ~~and~~
~~(b) has not, during the period allowed under section 40, paid the whole of the notified amount outstanding.~~

(3) Where a notification under section 40 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.

(5) The amount of a penalty imposed under this section is to be such amount, not exceeding twice the amount of the charge fixed for the relevant year, as OFCOM determine to be--

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(6) In making that determination OFCOM must have regard to--

- (a) any representations made to them by the notified charge payer; and
- (b) any steps taken by him towards paying the amounts that he was notified under section 40 were outstanding.

(7) Where OFCOM impose a penalty on a person under this section, they shall--

- (a) ~~within one week of making their decision to impose the penalty without delay~~, notify that person of that decision and of their reasons for that decision; and
- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

(8) A penalty imposed under this section--

- (a) must be paid to OFCOM; and
- (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

(9) In this section "the relevant year", in relation to a contravention of a requirement to pay the whole or a part of the administrative charge fixed for any year, means that year.

(10) The provisions of this section do not affect OFCOM's power, apart from those provisions, to bring proceedings (whether before or after the imposition of a penalty under this section) for the recovery of the whole or part of an amount due to them under section 38(1).

42 Suspending service provision for non-payment

(1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available ("the contravening provider") if they are satisfied--

- (a) that he is or has been in serious ~~and-or~~ repeated contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);
- (b) that the contraventions are not contraventions relating only to charges in respect of the application to the contravening provider of SMP apparatus conditions;

(ba) that, in the case of a single serious contravention, a notification has been given to the contravening provider under section 40 and the period for making representations under that section has expired;

(c) that in the case of a repeated contravention, the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;

(d) that in the case of a repeated contravention, an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and

(e) ~~that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions-~~ that the giving of the direction is appropriate and proportionate to the contravention in respect of which it is given.

(2) A direction under this section is--

(a) a direction that the entitlement of the contravening provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or

(b) a direction that that entitlement is restricted in the respects set out in the direction.

(3) A direction under this section--

(a) must specify the networks, services and facilities 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.

(4) 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.

(5) 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.

(6) OFCOM are not to give a direction under this section unless they have--

(a) notified the contravening provider of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;

(b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and

(c) considered every representation and proposal made to them during the period allowed by them for the contravening provider to take advantage of that opportunity.

(7) ~~That period must be one ending not less than one month after the day of the giving of the notification. That period is such reasonable period as OFCOM may specify, beginning with the day of the giving of the notification.~~

(8) If OFCOM consider it appropriate to do so (whether or not in consequence of any 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 networks, services or facilities, or parts of a network, service or facility, as they may determine.

(9) For the purposes of this section there are repeated contraventions by a person of requirements to pay administrative charges to the extent that--

- (a) in the case of a previous notification given to that person under section 40, OFCOM have determined for the purposes of section 41(2) that such a contravention did occur; and
- (b) in the period of ~~twelve~~ 24 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges.

43 Enforcement of directions under s 42

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility--

- (a) while his entitlement to do so is suspended by a direction under section 42; or
- (b) in contravention of a restriction contained in such a direction.

(2) A person guilty of an offence under subsection (1) shall be liable--

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(3) The duty of a person to comply with a condition of a direction under section 42 shall be a duty owed to every person who may be affected by a contravention of the condition.

(4) Where a duty is owed by virtue of subsection (3) to a person--

- (a) a breach of the duty that causes that person to sustain loss or damage, and
- (b) an act which--
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(5) In proceedings brought against a person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question.

(6) Sections [94-96A](#) to 99 apply in relation to a contravention of conditions imposed by a direction under section 42 as they apply in relation to a contravention of conditions set under section 45.

Register of providers required to notify or to pay charges

44 Duty of OFCOM to keep publicly accessible register

- (1) It shall be the duty of OFCOM to establish and maintain a register for the purposes of section 33.
- (2) OFCOM must record in the register--
 - (a) every designation by them for the purposes of section 33 or 38;
 - (b) every withdrawal by them of such a designation;
 - (c) every notification given to them under section 33; and
 - (d) every notification treated as given to them under that section by a transitional provision made under subsection (12) of that section.
- (3) Information recorded in the register must be so recorded in such manner as OFCOM consider appropriate.
- (4) It shall be the duty of OFCOM to publish a notification setting out--
 - (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (5) The publication of a notification under subsection (4) 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 it.
- (6) OFCOM must make the register available for public inspection--
 - (a) during such hours, and
 - (b) on payment of such fees,

as are set out in the notification for the time being in force under subsection (4).

Conditions of entitlement to provide network or service etc

45 Power of OFCOM to set conditions

- (1) OFCOM shall have the power to set conditions under this section binding the persons to whom they are applied in accordance with section 46.
- (2) A condition set by OFCOM under this section must be either--
 - (a) a general condition; or
 - (b) a condition of one of the following descriptions--
 - (i) a universal service condition;
 - (ii) an access-related condition;
 - (iii) a privileged supplier condition;

- (iv) a significant market power condition (an "SMP condition").
- (3) A general condition is a condition which contains only provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64.
- (4) A universal service condition is a condition which contains only provisions authorised or required by section 67.
- (5) An access-related condition is a condition which contains only provisions authorised by section 73.
- (6) A privileged supplier condition is a condition which contains only the provision required by section 77.
- (7) An SMP condition is either--
- (a) an SMP services condition; or
 - (b) an SMP apparatus condition.
- (8) An SMP services condition is a condition which contains only provisions which--
- (a) are authorised or required by one or more of sections 87 to [9192](#); or
 - (b) in the case of a condition applying to a person falling within section 46(8)(b), correspond to provision authorised or required by one or more of sections 87 to [89A](#).
- (9) An SMP apparatus condition is a condition containing only provisions authorised by section 93.
- (10) OFCOM's power to set a condition under this section making provision authorised or required by this Chapter includes each of the following--
- (a) power to impose a requirement on the person or persons to whom the condition is applied to comply with such directions with respect to the matters to which the condition relates as may be given from time to time by OFCOM or by another person specified in the condition;
 - (b) power to impose an obligation with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent or of an approval, or on the making of a recommendation, by OFCOM or by another person so specified;
 - (c) power, for the purposes of provision made by virtue of either of the preceding paragraphs, to confer a discretion exercisable from time to time by OFCOM or by another person specified in the condition or determined in accordance with provision contained in it;
 - (d) power (subject to section 51(3)) to set different conditions for different cases (including different conditions in relation to different parts of the United Kingdom); and
 - (e) power to revoke or modify the conditions for the time being in force.
- (11) The directions that may be authorised by virtue of subsection (10) do not include directions withdrawing, suspending or restricting a person's entitlement--
- (a) to provide, in whole or in part, any electronic communications network or electronic communications service; or
 - (b) to make available, in whole or in part, any associated facilities.

46 Persons to whom conditions may apply

- (1) A condition set under section 45 is not to be applied to a person except in accordance with the following provisions of this section.
- (2) A general condition may be applied generally--
 - (a) to every person providing an electronic communications network or electronic communications service; or
 - (b) to every person providing such a network or service of a particular description specified in the condition.
- (3) A universal service condition, access-related condition, privileged supplier condition or SMP condition may be applied to a particular person specified in the condition.
- (4) A privileged supplier condition may also be applied generally--
 - (a) to every person to whom such a condition is required to apply under section 77; or
 - (b) to every such person who is of a particular description specified in the condition.
- (5) The particular person to whom a universal service condition is applied--
 - (a) except in the case of a condition relating to matters mentioned in subsection (3) of section 66, must be a communications provider designated in accordance with regulations under that section; and
 - (b) in that excepted case, must be a communications provider so designated or a person who is not such a provider but who is so designated for the purposes only of conditions relating to those matters.
- (6) The particular person to whom an access-related condition is applied--
 - (a) in the case of a condition falling within section 74(1), may be any person whatever; and
 - (b) in any other case, must be a person who provides an electronic communications network or makes associated facilities available.
- (7) The particular person to whom an SMP services condition is applied must--
 - (a) be a communications provider or a person who makes associated facilities available; and
 - (b) fall within subsection (8).
- (8) A person falls within this subsection if--
 - (a) he is a person whom OFCOM have determined to be a person having significant market power in a specific market for electronic communications networks, electronic communications services or associated facilities (a "services market"); or
 - (b) it appears to OFCOM that he is a person on whom it is necessary, for the purpose of securing compliance with an international obligation of the United Kingdom, to impose a condition containing provision that corresponds to provision which, in the case of a person falling within paragraph (a), must be made (or may be made) under any of sections 87 to 89A.
- (9) The particular person to whom an SMP apparatus condition is applied must be--
 - (a) a person who supplies electronic communications apparatus; and
 - (b) a person whom OFCOM have determined to be a person having significant market power in a specific market for electronic communications apparatus (an "apparatus market").

47 Test for setting or modifying conditions

- (1) OFCOM must not, in exercise or performance of any power or duty under this Chapter--
- (a) set a condition under section 45, or
 - (b) modify such a condition,

unless they are satisfied that the condition or (as the case may be) the modification satisfies the test in subsection (2).

- (2) That test is that the condition or modification is--
- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates (but this paragraph is subject to subsection (3));
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (c) proportionate to what the condition or modification is intended to achieve; and
 - (d) in relation to what it is intended to achieve, transparent.

(3) Subsection (2)(a) does not apply in relation to the setting of a general condition.

48 Procedure for setting, modifying and revoking conditions

- (1) Subject to the following provisions of this Chapter--
- (a) the way in which conditions are to be set or modified under section 45 is by the publication of a notification setting out the conditions or modifications; and
 - (b) the way in which such a condition is to be revoked is by the publication of a notification stating that the condition is revoked.

~~(2) Before setting conditions under section 45, or modifying or revoking a condition so set, OFCOM must publish a notification--~~

~~(a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;~~

~~(b) setting out the effect of those conditions, modifications or revocations;~~

~~(c) giving their reasons for making the proposal; and~~

~~(d) specifying the period within which representations may be made to OFCOM about their proposal.~~

~~(3) That period must end no less than one month after the day of the publication of the notification.~~

(2) Where section 48A applies, OFCOM must comply with the applicable requirements of that section and section 48B before--

(a) setting conditions under section 45; or

(b) modifying or revoking a condition so set.

(2A) Where section 48A does not apply in relation to the setting, modification or revocation of conditions because of subsection (2) of that section--

(a) the conditions, or their modification or revocation must be temporary; and

(b) the notification published under subsection (1) of this section must state the period for which the conditions, or their modification or revocation, are to have effect.

(2B) Where OFCOM propose to extend or make permanent any such temporary conditions, modification or revocation –

(a) sections 48A and 48B(1) do not apply in relation to the proposal; and

(b) subsections (2) to (9) of section 48B apply in relation to the proposal as if the words from the beginning of subsection (2) to “appropriate” were omitted.

(4) In the case of a ~~notification under subsection (2)~~proposal by OFCOM with respect to an SMP condition, the applicable requirements of sections 79 to 86 must also be complied with.

~~(5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification under subsection (2) only if--~~

~~(a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and~~

~~(b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.~~

(6) The publication of a notification under this section or section 48A must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification--

(a) in the case of a notification setting general conditions, to the attention of such persons as OFCOM consider appropriate; and

(b) in any other case, to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the contents of the notification.

(7) Nothing in the following provisions of this Chapter imposing a duty on OFCOM to set or modify a condition shall be taken as dispensing with any of the requirements of this section, section 48A or 48B.

Domestic consultation in respect of section. 45 conditions

48A.—(1) This section applies where OFCOM propose to set, modify or revoke—

(a) SMP apparatus conditions; or

(b) any other conditions set under section 45 where what is proposed would, in OFCOM's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.

(2) But this section does not apply where the proposal is of EU significance and in OFCOM's opinion –

(a) there are exceptional circumstances; and

(b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

(3) OFCOM must publish a notification—

(a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;

(b) setting out the effect of those conditions, modifications or revocations;

(c) giving their reasons for making the proposal; and

(d) specifying the period within which representations may be made to OFCOM about their proposal.

(4) That period must end no less than one month after the day of the publication of the notification.

(5) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.

(6) OFCOM must—

(a) consider every representation about the proposal made to them during the period specified in the notification; and

(b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(7) Where the proposal is not of EU significance, OFCOM may then give effect to it, with any modifications that appear to OFCOM to be appropriate.

EU consultation for section. 45 conditions

48B.—(1) This section applies where, after complying with section 48A(6) in relation to a proposal of EU significance, OFCOM wish to proceed with the proposal.

(2) After making any modifications of the proposal that appear to OFCOM to be appropriate, OFCOM must send a copy of the proposal, and of a statement setting out the reasons for it, to—

(a) the European Commission;

(b) BEREC; and

(c) the regulatory authorities in every other member State.

(3) If at the end of the period of one month referred to in Article 7(3) of the Framework Directive no notification has been given to OFCOM by the Commission under Article 7a(1) of that Directive, OFCOM may give effect to the proposal, with any modifications that appear to OFCOM to be appropriate.

(4) Before giving effect to the proposal under subsection (3), OFCOM must consider any comments made by—

(a) the Commission;

(b) BEREC; and

(c) any regulatory authority in any other member State.

(5) Subsections (6) to (9) apply where such a notification is given by the Commission to OFCOM during that period.

(6) During the period of three months beginning with the notification, OFCOM must co-operate with the Commission and BEREC to identify the most appropriate and effective measure.

(7) OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate, within one month (or such longer period as may be allowed under paragraph (6) of Article 7a of the Framework Directive) of the Commission—

(a) issuing a recommendation to amend or withdraw the proposal in accordance with paragraph (5)(a) of that Article; or

(b) taking a decision to lift its reservations in accordance with paragraph (5)(b) of that Article.

(8) In a case in which OFCOM give effect to the proposal despite a recommendation of the Commission to amend or withdraw the proposal, OFCOM must send to the Commission a copy of a reasoned justification for their decision.

(9) If at the end of the period of one month referred to in paragraph (5) of Article 7a of the Framework Directive the Commission has neither issued a recommendation nor lifted its reservations in accordance with that paragraph, OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate.

Delivery of copies of notifications etc. in respect of section 45 conditions

48C.—(1) OFCOM must send to the Secretary of State a copy of every notification published under section 48(1) or 48A(3).

(2) OFCOM must send to the European Commission a copy of every notification published under section 48(1) with respect to—

- (a) a universal service condition;
- (b) an access-related condition falling within section 73(2);
- (c) an SMP services condition.

(3) OFCOM must send to BEREC a copy of every notification published under section 48(1) with respect to a proposal of EU significance.

(4) Where a notification published under section 48(1) relates to a proposal to which section 48A did not apply because of subsection (2) of that section, OFCOM must send a copy of a statement setting out the reasons for the proposal and for the urgent need to act to —

- (a) the Commission;
- (b) BEREC; and
- (c) the regulatory authorities in every other member State.

49 Directions and approvals for the purposes of a s 45 condition

(1) This section applies where--

- (a) a condition set under section 45 has effect by reference to directions, approvals or consents given by a person (whether OFCOM themselves or another); and
- (b) that person (referred to in this section and sections 49A to 49C as “the responsible person”) is proposing to give a direction, approval or consent that affects the operation of that condition or to modify or withdraw a direction, approval or consent so as to affect the condition's operation.

(2) ~~A person~~The responsible person must not give, modify or withdraw the direction, approval or consent unless he is satisfied that to do so is--

- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates (but this paragraph is subject to subsection (2A));
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what it is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

(2A) Subsection (2)(a) does not apply in relation to a direction, approval or consent affecting a general condition.

~~(3) Where the responsible person is a person other than OFCOM, that person shall in giving, modifying or withdrawing the direction In giving, modifying or withdrawing the direction, approval or consent, a person other than OFCOM shall be under the same duty as OFCOM to act in accordance with the six Community requirements set out in section 4.~~

~~(4) Where section 49A applies, the applicable requirements of that section and section 49B must be complied with before the direction, approval or consent is given, modified or withdrawn.~~

~~(4A) Where section 49A does not apply because of subsection (2) of that section—~~

~~(a) the direction, approval or consent given, or its modification or withdrawal, must be temporary; and~~

~~(b) the instrument that gives, modifies or withdraws the direction, approval or consent must state the period for which it is to have effect.~~

~~(4B) Where it is proposed to extend or make permanent any such temporary direction, approval or consent, or modification or withdrawal—~~

~~(a) sections 49A and 49B(1) do not apply in relation to the proposal; and~~

~~(b) subsections (2) to (10) of section 49B apply in relation to the proposal as if the words from the beginning of subsection (2) to “appropriate” were substituted “The responsible person”.~~

~~(4C) Where the responsible person is a person other than OFCOM, that person must refer to OFCOM such of the following questions as are relevant in the case in question—~~

~~(a) whether OFCOM is of the opinion mentioned in section 49A(1)(b);~~

~~(b) whether OFCOM is of the opinion mentioned in section 49A(2); and~~

~~(c) whether the proposal is of EU significance.~~

~~(4D) OFCOM must immediately determine any question so referred to them.~~

~~(4) Before the direction, approval or consent is given, modified or withdrawn, a notification must be published—~~

~~(a) stating that there is a proposal to give, modify or withdraw it;~~

~~(b) identifying the person whose proposal it is;~~

~~(c) setting out the direction, approval or consent to which the proposal relates;~~

~~(d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;~~

~~(e) giving reasons for the making of the proposal; and~~

~~(f) specifying the period within which representations may be made about the proposal to the person whose proposal it is.~~

~~(5) That period must be one ending not less than one month after the day of the publication of the notification.~~

~~(6) But, where—~~

~~(a) the person giving the notification is satisfied that there are exceptional circumstances justifying the use of a shorter period, and~~

~~(b) the notification is not one that is required to be sent to the European Commission under section 50(4) or (5),~~

~~the period specified as the period for making representations may be whatever shorter period that person considers reasonable in those circumstances.~~

~~(7) In a case in which—~~

~~(a) a person other than OFCOM is proposing to give, modify or withdraw a direction, approval or consent, and~~

~~(b) the condition for the purposes of which the direction, approval or consent has effect, or will have effect, provides for notifications of proposals for the purposes of that condition to be given by that person,~~

~~the obligation of publishing the notification for the purposes of subsection (4) of that proposal falls on that person.~~

~~(8) In any other case, the obligation of publishing a notification for the purposes of subsection (4) falls on OFCOM.~~

~~(9) The person who is authorised to give the direction, approval or consent may give effect, with or without modifications, to a proposal with respect to which a notification has been given under subsection (4) only if—~~

~~(a) he has considered every representation about the proposal that is made to him within the period specified in the notification; and~~

~~(b) he has had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State.~~

~~(10) The publication of a notification under this section must be in such manner as appears to the person publishing it to be appropriate for bringing the contents of the notification to the attention of such persons as he considers appropriate.~~

Domestic consultation for directions, approvals and consents

49A.—(1) This section applies where the responsible person is proposing to give, modify or withdraw a direction, approval or consent for the purposes of -

(a) an SMP apparatus condition; or

(b) any other condition where set under section 45 where what is proposed would, in OFCOM's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.

(2) But this section does not apply where the proposals is of EU significance and in OFCOM's opinion—

(a) there are exceptional circumstances; and

(b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

(3) The responsible person must publish a notification—

(a) stating that there is a proposal to give, modify or withdraw the direction, approval or consent;

(b) identifying the responsible person;

(c) setting out the direction, approval or consent to which the proposal relates;

(d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;

(e) giving reasons for the making of the proposal; and

(f) specifying the period within which representations may be made about the proposal to the responsible person.

(4) That period must be one ending not less than one month after the day of the publication of the notification.

(5) But where the responsible person is satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period that person considers reasonable in those circumstances.

(6) The responsible person must—

- (a) consider every representation about the proposal made to that person during the period specified in the notification; and
- (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State.

(7) Where the proposal is not of EU significance, the responsible person may then give effect to the proposal, with any modifications that appear to that person to be appropriate.

(8) The publication of a notification under this section must be in such manner as appears to the responsible person to be appropriate for bringing the contents of the notification to the attention of such persons as that person considers appropriate.

EU consultation for directions, approvals and consents

49B.—(1) This section applies where, after complying with section 49A(6) in relation to a proposal of EU significance, the responsible person wishes to proceed with it.

(2) After the responsible person has made any modifications of the proposal that appear to the person to be appropriate, the person must send a copy of the proposal, and of a statement setting out the reasons for it, to—

- (a) the European Commission;
- (b) BEREC; and
- (c) the regulatory authorities in every other member State.

(3) If at the end of the period of one month referred to in Article 7(3) of the Framework Directive no notification has been given to the responsible person by the Commission under Article 7a(1) of that Directive, the responsible person may give effect to the proposal, with any amendments that appear to the responsible person to be appropriate.

(4) Before giving effect to the proposal under subsection (3), the responsible person must consider any comments made by—

- (a) the Commission;
- (b) BEREC; and
- (c) any regulatory authority in any other member State.

(5) Subsections (6) to (10) apply where such a notification is given by the Commission to the responsible person during that period.

(6) During the period of three months beginning with the notification, the responsible person must cooperate with the Commission and BEREC to identify the most appropriate and effective measure.

(7) The responsible person may give effect to the proposal, with any modifications that appear to that person to be appropriate, within one month (or such longer period as may be allowed under paragraph (6) of Article 7a of the Framework Directive) of the Commission—

(a) issuing a recommendation to amend or withdraw the proposal in accordance with paragraph (5)(a) of that Article; or

(b) taking a decision to lift its reservations in accordance with paragraph (5)(b) of that Article.

(8) In a case in which the responsible person is a person other than OFCOM and the Commission has recommended that the proposal be amended or withdrawn, the responsible person may give effect to the proposal only with the agreement of OFCOM.

(9) In a case in which the responsible person gives effect to the proposal despite a recommendation of the Commission to amend or withdraw it, the responsible person must send to the Commission a copy of the responsible person's reasoned justification for the decision.

(10) If at the end of the period of one month referred to in paragraph (5) of Article 7a of the Framework Directive the Commission has neither issued a recommendation nor lifted its reservations in accordance with that paragraph, the responsible person may give effect to the proposal, with any modifications that appear to that person to be appropriate.

Delivery of copies of notifications etc. in respect of directions, approvals and consents

49C.—(1) The responsible person must send to the Secretary of State—

(a) a copy of every notification published under section 49A(3);

(b) a copy of every direction, approval or consent given for the purposes of a condition set under section 45; and

(c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.

(2) The responsible person must send to the European Commission—

(a) a copy of every direction, approval or consent given for the purposes of a universal service condition, an access-related condition falling within section 73(2) or an SMP services condition; and

(b) a copy of every instrument modifying or withdrawing such a direction, approval or consent.

(3) The responsible person must send to BEREC—

(a) a copy of every direction, approval or consent given for the purposes of a condition set under section 45 where the proposal to give the direction, approval or consent was a proposal of EU significance;

(b) a copy of every instrument modifying or withdrawing a direction, approval or consent given for the purposes of a condition set under section 45 where the proposal to modify or withdraw the direction, approval or consent was a proposal of EU significance.

(4) In a case in which the responsible person is a person other than OFCOM, the responsible person must send to OFCOM-

(a) a copy of every notification published under section 49A(3);

(b) a copy of every direction, approval or consent given for the purpose of a condition set under section 45;

(c) a copy of every instrument modifying or withdrawing such a direction, approval or consent;

(d) a copy of every proposal and statement to which section 49B(2) applies;

(e) a copy of any comments about such a proposal made by the Commission, BEREC or any regulatory authority in any other member State;

(f) a copy of every notification given to the responsible person by the Commission under Article 7a(1) of the Framework Directive;

(g) a copy of every recommendation made in respect of the proposal by the Commission under Article 7a(5)(a) of the Framework Directive.

(5) Where because of subsection (2) of section 49A, that section did not apply in relation to a proposal to give a direction, approval or consent for the purposes of a condition, or to modify or withdraw such a direction, approval or consent, the responsible person must a copy of a statement setting out the reasons for the proposal and for the urgent need to act to –

(a) the Commission;

(b) BEREC; and

(c) the regulatory authorities in every other member State.

(6) In a case in which the responsible person is a person other than OFCOM, references to OFCOM in section 39(4), (5) and (6A) are to be read as references to the responsible person in relation to copies of directions, approvals, consents, instruments and statement to which subsections (2), (3) and (5) of this section apply.

50 – Delivery of copies of notifications etc

~~(1) The relevant person must send to the Secretary of State--~~

~~(a) a copy of every notification published under section 48(1) or (2);~~

~~(b) a copy of every notification published under section 49(4);~~

~~(c) a copy of every direction, approval or consent given for the purpose of giving effect to a proposal required to be published under section 49(4); and~~

~~(d) a copy of every instrument modifying or withdrawing a direction, approval or consent for the purpose of giving effect to such a proposal.~~

~~(2) The relevant person must send to the European Commission--~~

~~(a) a copy of every notification published under section 48(1) with respect to an SMP services condition;~~

~~(b) a copy of every direction, approval or consent given for the purposes of such a condition; and~~

~~(c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.~~

~~(3) OFCOM must send to the European Commission and to the regulatory authorities of every other member State a copy of every notification published by them under section 48(2) with respect to a proposal which--~~

~~(a) relates to the setting, modification or revocation of an access-related condition falling within section 73(2) or (4) or of an SMP services condition; and~~

~~(b) is a proposal which, in OFCOM's opinion, would affect trade between member States.~~

~~(4) OFCOM must send to the European Commission and to the regulatory authorities of every other member State a copy of every notification published by them under section 49(4) with respect to a proposal which--~~

~~(a) relates to the giving of a direction, approval or consent for the purposes of--~~

~~(i) an access-related condition falling within section 73(2) or (4), or~~

~~(ii) an SMP services condition,~~

~~or to the modification or withdrawal of such a direction, approval or consent; and~~

~~(b) is a proposal which, in OFCOM's opinion, would affect trade between member States.~~

~~(5) Where it is a person other than OFCOM who is the relevant person who is required to publish a notification under section 49(4) relating to the giving, modification or withdrawal of a direction, approval or consent given for purposes mentioned in subsection (4)(a) of this section--~~

~~(a) that person must refer to OFCOM the question whether, in their opinion, the proposal would affect trade between member States;~~

~~(b) OFCOM must immediately determine that question on that reference; and~~

~~(c) the relevant person must send a copy of the notification to the European Commission and to the regulatory authorities of every other member State if OFCOM determine that the proposal is one which, in their opinion, would affect trade between member States.~~

~~(6) The relevant person must, in every other case in which it appears to him appropriate to do so, send a copy of--~~

~~(a) every notification published under section 48(1) or (2) or 49(4),~~

~~(b) every direction, approval or consent given for the purposes of a condition set under section 45, and~~

~~(c) every instrument modifying or withdrawing such a direction, approval or consent,~~

~~to the European Commission and to such of the regulatory authorities of the other member States as the relevant person thinks fit.~~

~~(7) Subsection (6) does not apply where--~~

~~(a) the notification or the notified proposal relates to an SMP apparatus condition, or to a direction, approval or consent for the purposes of such a condition; or~~

~~(b) the direction, approval or consent given, modified or withdrawn is for the purposes of such a condition.~~

~~(8) In this section "the relevant person", in relation to a notification, direction, approval or consent--~~

~~(a) except in a case falling within paragraph (b), means the person by whom it is published or (as the case may be) the person by whom it has been or is to be given, modified or withdrawn; and~~

~~(b) in the case of a direction, approval or consent given, modified or withdrawn by a person other than OFCOM for the purpose of giving effect to a proposal published by OFCOM under section 49(4), means OFCOM.~~

General conditions: subject-matter

51 Matters to which general conditions may relate

(1) Subject to sections 52 to 64, the only conditions that may be set under section 45 as general conditions are conditions falling within one or more of the following paragraphs--

(a) conditions making such provision as OFCOM consider appropriate for protecting the interests of the end-users of public electronic communications services;

(b) conditions making such provision as OFCOM consider appropriate for securing service interoperability and for securing, or otherwise relating to, network access;

(c) conditions making such provision as OFCOM consider appropriate for securing the proper and effective functioning of public electronic communications networks;

(d) conditions for giving effect to determinations or regulations made under section 71;

(e) conditions requiring ~~or regulating~~ the provision, availability and use, in the event of a disaster, of electronic communications networks, electronic communications services and associated facilities;

(f) conditions making such provision as OFCOM consider appropriate for securing the protection of public health by the prevention or avoidance of the exposure of individuals to electro-magnetic fields created in connection with the operation of electronic communications networks;

(g) conditions requiring compliance with relevant international standards.

(2) The power under subsection (1)(a) to set conditions for protecting the interests of the end-users of public electronic communications services includes power to set conditions for that purpose which--

(a) relate to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services; ~~and~~

(b) give effect to Community obligations to provide protection for such end-users in relation to the supply, provision or making available of those goods, services or facilities;

(c) specify requirements in relation to the provision of services to disabled end-users;

(d) require the provision, free of charge, of specified information, or information of a specified kind, to end-users;

(e) in order to prevent the degradation of service and the hindering or slowing down of traffic over networks, impose minimum requirements in relation to the quality of public electronic communications networks;

(f) require a communications provider, in specified circumstances, to block access to telephone numbers or services in order to prevent fraud or misuse, and enable them to withhold fees payable to another communications provider in those circumstances;

(g) impose a limit on the duration of a contract between an end-user and a communications provider;

(h) ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider.

(2A) Where OFCOM proposes to set a general condition of a kind specified in subsection (2)(e), they must--

(a) notify the European Commission and BEREC; and

(b) take due account of comments and recommendations made by the Commission.

(3) The power to set general conditions in relation to a description of electronic communications network or electronic communications service does not include power--

(a) to set conditions that are made applicable according to the identity of the provider of a network or service; or

(b) to set conditions that differ according to the identity of the provider of the networks or services to which they relate.

(4) The power to set general conditions falling within subsection (1)(b) does not include power to set conditions containing provision which under--

(a) section 73, or

(b) any of sections 87 to 91~~2~~,

must be or may be included, in a case in which it appears to OFCOM to be appropriate to do so, in an access-related condition or SMP condition.

(5) The conditions falling within subsection (1)(c) include conditions making such provision as OFCOM consider appropriate for the purpose, in accordance with Community obligations, of preventing or restricting electro-magnetic interference--

(a) with the provision of an electronic communications network or electronic communications service; or

(b) with, or with the receipt of, anything conveyed or provided by means of such a network or service.

(6) In this section "electro-magnetic interference" means interference by means of the emission or reflection of electro-magnetic energy in the course of, or in connection with, the provision any electronic communications network or electronic communications service.

(7) In this section "disaster" includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials.

General conditions: customer interests

52 Conditions relating to customer interests

(1) It shall be the duty of OFCOM to set such general conditions (if any) as they consider appropriate for securing that--

- (a) public communications providers, or
- (b) such descriptions of them as OFCOM consider appropriate,

establish and maintain procedures, standards and policies with respect to the matters mentioned in subsection (2).

(2) Those matters are--

- (a) the handling of complaints made to public communications providers by any of their domestic and small business customers, where the complaint relates to contractual conditions, or to the performance of a contract for the supply of an electronic communications network or service;
- (b) the resolution of disputes between such providers and any of their domestic and small business customers, where the complaint relates to contractual conditions, or to the performance of a contract for the supply of an electronic communications network or service;
- (c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes
 - (ca) the payment of compensation to a person in respect of delay in porting a number to another public communications provider, or abuse of the process for porting a number;
- (d) the information about service standards and about the rights of domestic and small business customers that is to be made available to those customers by public communications providers;
- (e) any other matter appearing to OFCOM to be necessary for securing effective protection for the domestic and small business customers of such providers.

(3) It shall be the duty of OFCOM, in setting conditions in accordance with subsection (1), to secure so far as they consider appropriate--

- (a) that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent, non-discriminatory and effective;
- (b) that domestic and small business customers have the right to use those procedures free of charge; and

(c) that where public communications providers are in contravention of conditions set in accordance with the preceding provisions of this section, the providers follow such procedures as may be required by the general conditions.

(4) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for the handling of complaints are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers to establish and maintain procedures that conform with a code of practice which is--

- (a) applicable to the providers to whom the conditions apply; and
- (b) for the time being approved by OFCOM for the purposes of this subsection.

(5) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for resolving disputes are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers--

- (a) to establish and maintain procedures for resolving disputes; and
- (b) to secure that those procedures are, and continue to be, approved by OFCOM.

(6) In this section "domestic and small business customer", in relation to a public communications provider, means a customer of that provider who is neither--

- (a) himself a communications provider; nor
- (b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

53 Approval of codes of practice for the purposes of s 52

(1) Where a code of practice is submitted to OFCOM for approval, they shall approve that code if and only if, in their opinion, it makes all such provision as they consider necessary in relation to the matters dealt with in the code for the protection of the domestic and small business customers of the public communications providers to whom the code applies.

(2) It shall be the duty of OFCOM to keep under review the codes of practice for the time being approved by them.

(3) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate--

- (a) approve modifications that have been made to an approved code;
- (b) withdraw their approval from a code; or
- (c) give notice that the withdrawal of their approval will take effect from such time as may be specified in the notification unless such modifications of the code as are specified in the notification are made before that time.

(4) In considering--

- (a) whether to approve a code of practice, or
- (b) whether or in what manner to exercise their powers under subsections (2) and (3) of this section,

OFCOM must have regard to the matters mentioned in subsection (5).

(5) Those matters are--

- (a) the need to secure that customers are able readily to comprehend the procedures that are provided for by an approved code of practice;
- (b) the need to secure that there is consistency between the different codes for the time being approved by OFCOM; and
- (c) the need to secure that the number of different codes so approved is kept to a minimum.

(6) In this section--

"approval" means approval for the purposes of section 52(4) and "approve" and "approved" are to be construed accordingly; and

"domestic and small business customer" has the same meaning as in section 52.

54 Approval of dispute procedures for the purposes of s 52

(1) Before giving their approval to any dispute procedures, OFCOM must consult the Secretary of State.

(2) OFCOM are not to approve dispute procedures unless they are satisfied that the arrangements under which the procedures have effect--

- (a) are administered by person who is for practical purposes independent (so far as decisions in relation to disputes are concerned) of both OFCOM and the communications providers to whom the arrangements apply;
- (b) give effect to procedures that are easy to use, transparent, non-discriminatory and effective;
- (c) give, in the case of every communications provider to whom the arrangements apply, a right to each of his domestic and small business customers to use the procedures free of charge;
- (d) ensure that all information necessary for giving effect to the procedures is obtained;
- (e) ensure that disputes are effectively investigated;
- (f) include provision conferring power to make awards of appropriate compensation; and
- (g) are such as to enable awards of compensation to be properly enforced.

(3) OFCOM may approve dispute procedures subject to such conditions (including conditions as to the provision of information to OFCOM) as they may think fit.

(4) It shall be the duty of OFCOM to keep under review the dispute procedures for the time being approved by them.

(5) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate--

- (a) modify the conditions of their approval of any dispute procedures or withdraw such an approval; or
- (b) give notice that the modification of those conditions, or the withdrawal of such an approval, will take effect from such time as may be specified in the notification unless the procedures (or the arrangements under which they have effect) are modified before that time in the manner required by the notification.

(6) In considering--

- (a) whether to approve dispute procedures, or
- (b) whether or in what manner to exercise their powers under subsections (3) to (5),

OFCOM must have regard to the matters mentioned in subsection (7).

(7) Those matters are--

- (a) the need to secure that customers are able readily to comprehend dispute procedures;
- (b) the need to secure that there is consistency between the different procedures for the time being approved by OFCOM; and
- (c) the need to secure that the number of different sets of procedures so approved is kept to a minimum.

(8) In this section--

"approval" means approval for the purposes of subsection (5) of section 52 and "approve" and "approved" are to be construed accordingly;

"dispute procedures" means any such procedures as may fall to be approved for the purposes of that subsection; and

"domestic and small business customer" has the same meaning as in section 52.

55 Orders by OFCOM in the absence of conditions under s 52

(1) OFCOM may make an order under this section if, at any time, they consider in relation to any one or more public communications providers--

- (a) that it is not practicable, or at least not appropriate, for OFCOM's duties under subsections (1) and (3) of section 52 to be performed in a particular respect by the setting of general conditions; and
- (b) that it is necessary to make the order for the purpose--
 - (i) of securing the necessary protection for the customers of that provider or of those providers; or
 - (ii) of securing compliance with a Community obligation.

(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 complaints and disputes mentioned in section 52(2);
- (b) provision for the enforcement of those requirements;
- (c) 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; and
 - (f) 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 public communications providers 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 a body corporate or of a procedure; or
 - (b) the making of any other arrangements for the purposes of the requirements of such an order.
- (5) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.
- (6) Section 403 applies to the power of OFCOM to make an order under this section.
- (7) 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.

General conditions: telephone numbers

56 The National Telephone Numbering Plan

- (1) It shall be the duty of OFCOM to publish a document (to be known as "the National Telephone Numbering Plan") setting out--
- (a) the numbers that they have determined to be available for allocation by them as telephone numbers;
 - (b) such restrictions as they consider appropriate on the adoption of numbers available for allocation in accordance with the plan; ~~and~~
 - (ba) such requirements as they consider appropriate, for the purpose of protecting consumers, in relation the tariff principles and maximum prices applicable to numbers so adopted or available for allocation; and
 - (c) such restrictions as they consider appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put.
- (2) It shall be OFCOM's duty--
- (a) from time to time to review the National Telephone Numbering Plan; and
 - (b) to make any revision of that plan that they think fit in consequence of such a review;
- but this duty must be performed in compliance with the requirements, so far as applicable, of section 60.
- (3) OFCOM must also keep such day to day records as they consider appropriate of the telephone numbers allocated by them in accordance with the National Telephone Numbering Plan.

(4) The publication of the National Telephone Numbering Plan, or of a revision of it, must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the Plan, or of the revised Plan, to the attention of such persons as OFCOM consider appropriate.

(5) In this Chapter references to a telephone number are (subject to subsection (7)) references to any number that is used (whether or not in connection with telephony) for any one or more of the following purposes--

- (a) identifying the destination for, or recipient of, an electronic communication;
- (b) identifying the origin, or sender, of an electronic communication;
- (c) identifying the route for an electronic communication;
- (d) identifying the source from which an electronic communication or electronic communications service may be obtained or accessed;
- (e) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
- (f) identifying the communications provider by means of whose network or service an electronic communication is to be transmitted, or treated as transmitted.

(6) In this Chapter references to the adoption of a telephone number by a communications provider are references to his doing any of the following in relation to a number allocated (whether or not to that provider) by OFCOM--

- (a) allocating or transferring that number to a particular customer or piece of apparatus;
- (b) using that number for identifying a service or route used by that provider or by any of his customers;
- (c) using that number for identifying a communication as one to be transmitted by that provider;
- (d) designating that number for use in selecting a service or the required elements or characteristics of a service;
- (e) authorising the use of that number by others for any of the purposes mentioned in subsection (5).

(7) The Secretary of State may by order exclude such numbers as may be described in the order from the numbers that are to be treated as telephone numbers for the purposes of this Chapter.

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

(9) References in this section to the allocation of a number are references to its allocation for the purposes of general conditions under section 58 or in accordance with conditions under section 59.

(10) In this section--

"electronic communication" means a communication for transmission by means of an electronic communications network; and

"number" includes data of any description.

Conditions for limitations on allocation of telephone numbers

56A.—(1) When OFCOM allocate telephone numbers in accordance with the National Telephone Numbering Plan, they must specify whether an allocation may be transferred from one person to another, and may set out the conditions under which the allocation may be transferred.

(2) If OFCOM allocate telephone numbers for a limited period of time, the limitation must be objectively justifiable in relation to the services to which it relates, taking account of the need to allow for an appropriate period of investment amortisation.

57 Conditions to secure access to telephone numbers

- (1) General conditions may impose such requirements as OFCOM consider appropriate for securing that every end-user of a public electronic communications service is able, by means of that service--
- (a) to make calls or otherwise transmit electronic communications to every normal telephone number; and
 - (b) to receive every call or other electronic communication that is made or transmitted to him using such a service from apparatus identified by a normal telephone number.
- (2) A normal telephone number is one which--
- (a) has been made available, in accordance with the National Telephone Numbering Plan, as a number to be used for the purpose of identifying the destination for, or the recipient of, electronic communications; and
 - (b) is for the time being--
 - (i) a number adopted by a communications provider to be used for such a purpose; or
 - (ii) a number in use for such a purpose by a person other than a communications provider to whom it has been allocated in accordance with conditions under section 59.
- (3) In this section "electronic communication" has the same meaning as in section 56.

58 Conditions about allocation and adoption of numbers

- (1) General conditions may include conditions which--
- (a) prohibit the adoption of telephone numbers by a communications provider except in cases where the numbers have been allocated by OFCOM to a person;
 - (aa) impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an electronic communications service by means of telephone numbers adopted or available for use;
 - (b) regulate the use by a communications provider, for the purpose of providing an electronic communications network or electronic communications service, of telephone numbers not allocated to that provider;
 - (c) impose restrictions on the adoption of telephone numbers by a communications provider, and on other practices by communications providers in relation to telephone numbers allocated to them;
 - (d) impose requirements on a communications provider in connection with the adoption by him of telephone numbers;
 - (e) require an allocation of particular telephone numbers to be transferred from one communications provider to another in the circumstances provided for in the conditions;
 - (f) impose such requirements and restrictions on a communications provider from whom an allocation is required to be transferred as may be provided for, in relation to the transfer, in the conditions;

- (g) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of the allocation to him of telephone numbers;
 - (h) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of transfers of allocations from one person to another; and
 - (i) require communications providers to secure compliance with such rules relating to the use of telephone numbers by their customers as OFCOM may set out in general conditions or determine in accordance with provision made by the general conditions.
- (2) General conditions may also--
- (a) provide for the procedure to be followed on the making of applications to OFCOM for the allocation of telephone numbers;
 - (b) provide for the information that must accompany such applications and for the handling of such applications;
 - (c) provide a procedure for telephone numbers to be reserved pending the making and disposal of an application for their allocation;
 - (d) provide for the procedure to be followed on the making of applications for telephone numbers to be reserved, and for the handling of such applications;
 - (e) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the adoption by a communications provider of telephone numbers allocated to that provider;
 - (f) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the transfer of an allocation from one person to another.
- (3) The conditions that may be set under subsection (1)(d) include conditions imposing requirements with respect to the provision of information for purposes connected with--
- (a) the compilation of directories; and
 - (b) the provision of directory enquiry facilities.
- (4) The procedure to be followed on the making of an application for the allocation of numbers that are available for allocation in accordance with the National Telephone Numbering Plan must require OFCOM's determination of the application to be made--
- (a) in the case of an application made in response to an invitation in accordance with subsection (5), before the end of six weeks after the day on which the application is received; and
 - (b) in any other case, before the end of three weeks after that day.
- (5) Where OFCOM are proposing to allocate any telephone numbers, they may--
- (a) invite persons to indicate the payments each would be willing to make to OFCOM if allocated the numbers; and
 - (b) make the allocation according to the amounts indicated.
- (6) General conditions providing for payments to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)--
- (a) must set out the principles according to which the amounts of the payments are to be determined;

- (b) may provide for the payments to consist of a lump sum in respect of a particular allocation or transfer or of sums payable periodically while an allocation remains in force, or of both;
 - (c) may provide for the amounts to be determined by reference to--
 - (i) any indication according to which the allocation has been made as mentioned in subsection (5); or
 - (ii) any other factors (including the costs incurred by OFCOM in connection with the carrying out of their functions by virtue of section 56 and this section) as OFCOM think fit.
- (7) General conditions may--
- (a) make modifications from time to time of, or of the method of determining, the amounts of periodic payments falling to be made by virtue of conditions containing provision authorised by this section; and
 - (b) make different provision in relation to different descriptions of communications provider and different descriptions of telephone number.
- (8) Nothing in subsection (7) authorises the modification, after it has been fixed, of the amount of a periodic payment fixed in accordance with arrangements made in relation to numbers allocated as mentioned in subsection (5)(b).
- (9) Payments that are required to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)--
- (a) must be paid to them as soon as they become due in accordance with the conditions imposing the obligation to pay; and
 - (b) if not so paid, are to be recoverable by them accordingly.

59 Telephone numbering conditions binding non-providers

- (1) OFCOM may set conditions under this section that apply to persons other than communications providers and relate to--
- (a) the allocation of telephone numbers to such persons;
 - (b) the transfer of allocations to and from such persons; and
 - (c) the use of telephone numbers by such persons.
- (2) The conditions that may be set under this section include conditions imposing obligations corresponding to any of the obligations that may be imposed on communications providers by general conditions making provision for, or in connection with--
- (a) the allocation of telephone numbers;
 - (b) the transfer of allocations; or
 - (c) the use of telephone numbers.
- (3) Subsection (10) of section 45 applies to OFCOM's power to set a condition under this section as it applies to their power to set a condition under that section.
- (4) Sections 47 to 49 apply in relation to--
- (a) the setting of conditions under this section and the modification and revocation of such conditions; and

(b) the giving, modification or withdrawal of any direction, approval or consent for the purposes of a condition under this section,

as they apply in the case of general conditions and in the case of directions, approvals and consents given for the purposes of general conditions.

(5) It shall be the duty of a person who--

- (a) is not a communications provider, but
- (b) applies for the allocation of a telephone number, or is allocated such a number,

to comply with any conditions set under this section.

(6) That duty shall be enforceable in civil proceedings by OFCOM--

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c 36); or
- (c) for any other appropriate remedy or relief.

(7) Subsection (6) does not apply in the case of a person against whom the obligations contained in the condition in question are enforceable (by virtue of his having become a communications provider) as obligations imposed by general conditions.

60 Modification of documents referred to in numbering conditions

(1) This section applies where numbering conditions for the time being have effect by reference to provisions, as they have effect from time to time, of--

- (a) the National Telephone Numbering Plan; or
- (b) another document published by OFCOM.

(2) OFCOM must not revise or otherwise modify the relevant provisions unless they are satisfied that the revision or modification is--

- (a) objectively justifiable in relation to the matters to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what the modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

(3) Before revising or otherwise modifying the relevant provisions, OFCOM must publish a notification--

- (a) stating that they are proposing to do so;
- (b) specifying the Plan or other document that they are proposing to revise or modify;
- (c) setting out the effect of their proposed revisions or modifications;
- (d) giving their reasons for making the proposal; and
- (e) specifying the period within which representations may be made to OFCOM about their proposal.

- (4) That period must be one ending not less than one month after the day of the publication of the notification.
- (5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification under subsection (3) only if--
- (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
 - (b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.
- (6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.
- (7) In this section--
- "numbering conditions" means--
- (a) general conditions the making of which is authorised by section 57 or 58;
 - (b) conditions set under section 59;

"the relevant provisions", in relation to the Plan or document, means the provisions of the Plan or document by reference to which (as they have effect from time to time) the numbering conditions in question have effect.

61 Withdrawal of telephone number allocations

- (1) Where OFCOM have allocated telephone numbers for the purposes of any numbering conditions, they may withdraw that allocation if, and only if, the case is one in which the withdrawal of an allocation is authorised by this section.
- (2) The withdrawal of an allocation is authorised (subject to section 62) if--
- (a) consent to the withdrawal is given by the person to whom the numbers are for the time being allocated;
 - (b) the withdrawal is made for the purposes of a transfer of the allocation required by numbering conditions;
 - (c) the withdrawal is made for the purposes of a numbering reorganisation applicable to a particular series of telephone numbers;
 - (d) the withdrawal is made in circumstances specified in the numbering conditions and for the purpose of securing that what appears to OFCOM to be the best and most efficient use is made of the numbers and other data that are appropriate for use as telephone numbers;
 - (e) the allocated numbers are numbers that have not been adopted during such period after their allocation as may be specified in the numbering conditions; or
 - (f) the allocated numbers are comprised in a series of numbers which have not to a significant extent been adopted or used during such period as may be so specified.
- (3) The withdrawal of an allocation is also authorised where--

- (a) there have been serious ~~and or~~ repeated contraventions, by the person to whom the allocation is for the time being allocated, of the numbering conditions; and
 - (b) it appears to OFCOM that the taking of other steps in respect of the contraventions is likely to prove ineffective for securing future compliance.
- (4) The withdrawal of an allocation is also authorised where--
- (a) the person to whom the allocation is for the time being allocated is not a communications provider; and
 - (b) it appears to OFCOM that contraventions by that person of numbering conditions makes the withdrawal of the allocation appropriate.
- (5) OFCOM's power to set conditions specifying circumstances for the purposes of subsection (2)(d), and their power to withdraw an allocation in the specified circumstances, are each exercisable only in a manner that does not discriminate unduly--
- (a) against particular communications providers;
 - (b) against particular users of the allocated numbers; or
 - (c) against a particular description of such providers or users;

and the purposes for which those powers may be exercised do not include the carrying out of a numbering reorganisation of the sort mentioned in subsection (2)(c).

- (6) Where OFCOM are proposing to withdraw an allocation in exercise of the power conferred by virtue of subsection (2)(e) or (f), they must--
- (a) give a notification of their proposal;
 - (b) consider any representations made to them about the proposal within the period of one month following the day on which the notification is given; and
 - (c) ensure that the withdrawal (if OFCOM decide to proceed with it after considering those representations) does not take effect until the end of the three months beginning with the end of the period mentioned in paragraph (b).
- (7) A notification for the purposes of subsection (6) must be given in such manner as OFCOM consider appropriate for bringing it to the attention of--
- (a) the person to whom the numbers to which the proposed withdrawal relates are for the time being allocated;
 - (b) every person appearing to OFCOM to be a person to whom communications are or may be transmitted using one of those numbers for identifying the destination or route;
 - (c) every person who uses one or more of those numbers for obtaining access to services or for communication; and
 - (d) every other person who, in OFCOM's opinion, is likely to be affected by the proposal.

- (8) For the purposes of this section there are repeated contraventions by a person of numbering conditions to the extent that--

~~(a) in the case of a previous notification given to that person under section 94, OFCOM have determined for the purposes of section 95(2) or 96(2) that a contravention of a numbering condition did occur; and~~

~~(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 numbering conditions;~~

~~(a) in the case of a previous notification of a contravention given to that person under section 96A, OFCOM have given a confirmation decision to that person under section 96C(2) in respect of the contravention; and~~

~~(b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of numbering conditions;~~

and for the purposes of this subsection it shall be immaterial whether the ~~notifications confirmation decisions~~ related to the same contravention or to different contraventions of the same or different conditions.

(9) In this section "numbering conditions" means--

- (a) general conditions the making of which is authorised by section 58; or
- (b) conditions set under section 59.

62 Numbering reorganisations

(1) This section applies to the withdrawal of an allocation for the purposes of a numbering reorganisation that is applicable to a particular series of telephone numbers.

(2) The allocation is to be withdrawn only if the reorganisation, so far as it relates to numbers of any description, is not such as to discriminate unduly--

- (a) against particular communications providers;
- (b) against particular users of the allocated numbers; or
- (c) against a particular description of such providers or users.

(3) The allocation must not be withdrawn if the reorganisation fails to provide for withdrawn allocations to be replaced by allocations of telephone numbers so nearly resembling the numbers to which the withdrawal relates as the purpose of the reorganisation allows.

(4) Where a replacement allocation is made for the purposes of the re-organisation--

- (a) no payment is to be made to OFCOM in respect of the making of the replacement allocation; but
- (b) subsection (5) is to apply.

(5) Where this subsection applies--

- (a) a provision for the making of periodic payments in respect of the withdrawn allocation is to be treated, to the extent that OFCOM determine that it should, as a provision requiring the making of periodic payments in respect of the replacement allocation; and
- (b) OFCOM may, if they think fit, make such repayments or adjustments of a provision for payment as appear to them to be appropriate in consequence of differences between--
 - (i) the numbers to which the withdrawn allocation relates; and
 - (ii) the numbers to which the replacement allocation relates.

63 General duty as to telephone numbering functions

- (1) It shall be the duty of OFCOM, in the carrying out of their functions under sections 56 to 62--
 - (a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and
 - (b) to encourage efficiency and innovation for that purpose.
- (2) It shall also be the duty of OFCOM, in carrying out those functions, to secure that there is no undue discrimination by communications providers against other communications providers in relation to the adoption of telephone numbers for purposes connected with the use by one communications provider, or his customers, of an electronic communications network or electronic communications service provided by another.
- (3) In this section "number" has the same meaning as in section 56.

General conditions: must-carry obligations

64 Must-carry obligations

- (1) General conditions may include conditions making any provision that OFCOM consider appropriate for securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the conditions.
- (2) A general condition containing provision authorised by this section is not (subject to subsection (4)) to require a service to be broadcast or otherwise transmitted by means of an electronic communications network unless--
 - (a) the service is included in the list of must-carry services; and
 - (b) the effect of the requirement is confined to networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes.
- (3) That list is as follows--
 - (a) any service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;
 - (b) the Channel 3 services so far as provided in digital form;
 - (c) Channel 4 so far as provided in digital form;
 - (d) Channel 5 so far as provided in digital form;
 - (e) S4C Digital;
 - (f) the digital public teletext service.
- (4) General conditions making provision authorised by this section in relation to a listed service must, to such extent as OFCOM consider appropriate (and subject to subsection (5))--
 - (a) apply the requirement to broadcast or otherwise transmit that service to every service which is an ancillary service by reference to the listed service (including, but not limited to, a service enabling access for disabled end-users); and

(b) provide for the listed service to be treated for the purposes of the conditions as constituting such other services comprised in or provided with that service as may be determined by OFCOM.

(5) General conditions making provision authorised by this section must also comply with all such restrictions (if any) as may be imposed by order made by the Secretary of State as to the maximum and minimum amounts, or proportions, of available capacity that are to be required by such conditions to be used in the case of a network for the broadcasting or other transmission of particular services, or descriptions of service.

(6) In making an order under subsection (5) the Secretary of State must have regard to--

(a) the objective of securing that services included in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable; and

(b) the need to secure that the amount of capacity available in the case of every network for making other services available is reasonable and, accordingly, that the burden of complying with conditions set in accordance with this section is proportionate to the public benefit to be secured by that objective.

(7) It shall be the duty of the Secretary of State from time to time to review--

(a) the list of must-carry services; and

(b) any requirements for the time being in force under this section with respect to the terms on which services must be broadcast or otherwise transmitted.

(8) Where the Secretary of State carries out such a review, he must consult the following about the matters under review--

(a) OFCOM; and

(b) such persons who, in his opinion, are likely to be affected by a modification of the list of must-carry services, or who represent any of those persons, as he thinks fit.

(9) If, on such a review, he considers it appropriate to do so, the Secretary of State may by order modify the list of must-carry services.

(10) In determining whether it is appropriate for the purposes of subsection (9) to add a service to the list of must-carry services or to remove it, the Secretary of State must have regard, in particular, to--

(a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;

(b) the extent to which the service (if it were not included in the list) would nevertheless be made available to an acceptable technical standard by means of the networks to which conditions set in accordance with this section apply;

(c) the capacity left available, after the requirements of those conditions have been complied with, for the broadcasting or other transmission of material by means of each of those networks; and

(d) the need to secure that the burden of complying with conditions so set is proportionate to the objective of securing that the services in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable.

(11) The Secretary of State may also, if (whether on such a review or in any other circumstances) he considers it appropriate to do so, by order make provision imposing requirements as to what, as between--

- (a) the person providing a must-carry service, and
- (b) the person providing a network by means of which it is to be provided,

are to be the terms on which the service is to be broadcast or otherwise transmitted, in pursuance of general conditions set in accordance with this section, by means of that network.

(12) An order under subsection (11) may provide for the terms to be determined by OFCOM in accordance with the provisions of the order.

(13) Before making an order under subsection (5), and before making an order under subsection (11) in a case in which there has been no review under subsection (7), the Secretary of State must consult--

- (a) OFCOM, and
- (b) such persons who, in his opinion, are likely to be affected by the order, or who represent any of those persons, as he thinks fit.

(14) Section 362 applies for construing this section as it applies for the purposes of Part 3.

Universal service conditions

65 Obligations to be secured by universal service conditions

(1) The Secretary of State must by order ("the universal service order") set out the extent to which the things falling within subsection (2) must, for the purpose of securing compliance with Community obligations for the time being in force, be provided, made available or supplied throughout the United Kingdom.

(2) Those things are--

- (a) electronic communications networks and electronic communications services;
- (b) facilities capable of being made available as part of or in connection with an electronic communications service;
- (c) particular methods of billing for electronic communications services or of accepting payment for them;
- (d) directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
- (e) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.

(3) The universal service order may contain guidance about matters relating to the pricing of things that the order says must be provided, made available or supplied.

(4) Before making or varying the universal service order, the Secretary of State must consult OFCOM and such other persons as he considers appropriate.

(5) Before making or varying the universal service order, the Secretary of State must take due account of the desirability of not favouring--

- (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

66 Designation of universal service providers

- (1) OFCOM may by regulations make provision for the designation of the persons to whom universal service conditions are to be applicable.
- (2) Subject to subsection (3), those regulations are not to authorise the designation of a person other than a communications provider.
- (3) The regulations may provide for a person other than a communications provider to be designated for the purposes only of conditions relating to--
 - (a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
 - (b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (4) OFCOM may from time to time--
 - (a) review the designations for the time being in force in accordance with regulations under this section; and
 - (b) on such a review, consider what (if any) universal service conditions should continue to apply to each of the designated persons.
- (5) The procedure to be followed in the case of every such review must be the procedure provided for in regulations made by OFCOM.
- (6) Regulations made by OFCOM under this section must provide for a person's designation as a person to whom universal service conditions are to be applicable to cease to have effect where, in any such case as may be described in the regulations, the universal service conditions applied to him are all revoked.
- (7) Regulations made by OFCOM under this section providing a procedure for the designation of persons, or for the conduct of a review under subsection (4), must not provide for any procedure other than one appearing to OFCOM--
 - (a) to be efficient, objective and transparent; and
 - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- (8) Where--
 - (a) OFCOM designate a person in accordance with regulations under this section, or
 - (b) a designation of a person in accordance with any such regulations ceases to have effect,

they must give a notification of that designation, or of that fact, to the European Commission.
- (9) A notification under this section must identify the person who has been designated, or the person whose designation has ceased to have effect.
- (10) Section 403 applies to the power of OFCOM to make regulations under this section.

67 Subject-matter of universal service conditions

(1) OFCOM may set any such universal service conditions as they consider appropriate for securing compliance with the obligations set out in the universal service order.

(1A) OFCOM may also set universal service conditions which apply to a designated universal service provider who proposes to make a disposal to another person of a substantial part or all of the designated universal service provider's local access network assets.

(1B) But subsection (1A) does not apply where the disposal is made by a company to a connected company (within the meaning given by section 1122(2) of the Corporation Tax Act 2010).

(2) Universal service conditions applied to a person must include a condition requiring him to publish information about his performance in complying with the universal service conditions that apply to him.

(3) A condition set in accordance with subsection (2) must contain provision which--

- (a) requires information published in accordance with it to be updated from time to time and published again;
- (b) requires information so published to satisfy the requirements that OFCOM consider appropriate for securing that it is adequate; and
- (c) requires information so published to be framed by reference to the quality of service parameters, definitions and measurement methods for the time being set out in Annex III to the Universal Service Directive.

(4) A condition set in accordance with that subsection may impose requirements as to--

- (a) the times at which information published in accordance with it is to be published; and
- (b) the manner in which that information is to be published.

(5) Universal service conditions may impose an obligation on a person to whom they apply to do one or both of the following, if required to do so by OFCOM--

- (a) to make facilities available for enabling information published in pursuance of a condition applied to that person under subsection (2) to be independently audited;
- (b) to meet the costs of any independent auditing of that information that is required by OFCOM.

(6) The reference in subsection (5) to the independent auditing of information is a reference to its being audited by a qualified auditor--

- (a) for accuracy; and
- (b) for its usefulness in the making of comparisons with information published by other designated universal service providers.

(7) Universal service conditions may impose performance targets on designated universal service providers with respect to any of the matters in relation to which obligations may be imposed by such conditions.

(8) In setting a universal service condition, OFCOM must have regard to any guidance about matters relating to pricing that is contained in the universal service order.

(9) In this section "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 (5) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

68 Tariffs etc for universal services

- (1) It shall be the duty of OFCOM--
- (a) to keep under review universal service tariffs; and
 - (b) to monitor changes to those tariffs.
- (2) Universal service conditions may require one or more of the following--
- (a) the use of a common tariff, or of common tariffs, in relation to anything mentioned in section 65(2);
 - (b) the use, in such cases as may be specified or described in the conditions, of such special tariffs in relation to anything so mentioned as may be so specified or described;
 - (c) the fixing of tariffs used in accordance with the conditions by the use of such methods, and by reference to such methods of computing costs, as may be so specified or described.
- (3) Universal service conditions must secure that the terms on which a person is provided with anything required by the universal service order do not require him--
- (a) to pay for an unnecessary additional service; or
 - (b) to pay, in respect of anything required by the order, any amount that is attributable to the provision to him of such a service.
- (4) The references in subsection (3), in relation to a person, to an unnecessary additional service are references to anything the provision of which--
- (a) he has to accept by reason of his being provided, at his request, with something required by the order ("the requested service"); and
 - (b) is not necessary for the purpose of providing him with the requested service.
- (5) It shall be the duty of OFCOM, in setting a universal service condition about universal service tariffs, to have regard to anything ascertained by them in the performance of their duty under subsection (1).
- (6) References in this section to a universal service tariff are references to any of the tariffs used by designated universal service providers or where there is no designated universal service provider, by other persons in relation to the things for the time being required by the universal service order.
- (7) References in this section to providing a person with anything include references to making it available or supplying it to him.
- (8) In this section "tariff" includes a pricing structure.

69 Directories and directory enquiry facilities

- (1) This section applies where universal service conditions require a designated universal service provider--

- (a) to supply a directory capable of being used in connection with the use of an electronic communications network or electronic communications service; or
- (b) to make available directory enquiry facilities capable of being used for purposes connected with use of such a network or service.

(2) The universal service conditions applied to the provider must include the conditions that OFCOM consider appropriate for securing that the provider does not unduly discriminate against a source of relevant information--

- (a) in the compiling of the directory or the answering of directory enquiries; or
- (b) in the treatment in the directory, or for the purposes of the facilities, of any relevant information from that source.

(3) In this section--

- (a) references to relevant information are references to information provided for inclusion in the directory or for use in the answering of directory enquiries; and
- (b) references to a source of relevant information are references to a communications provider or designated universal service provider who provides relevant information.

70 Review of compliance costs

(1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular designated universal service provider of complying in relation to any matter with any one or more of the universal service conditions applied to him.

(2) Where--

- (a) regulations under section 66 require the financial burden of so complying to be taken into account in determining whom to designate, and
- (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,

that must be the method of calculation applied on a review under this section.

(3) Where subsection (2) does not apply, the financial burden of so complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the designated universal service provider from--

- (a) his designation; and
- (b) the application to him of universal service conditions.

(4) After carrying out a review under this section OFCOM must either--

- (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of designated universal service providers; or
- (b) themselves carry out an audit of those calculations.

(5) OFCOM must ensure, in the case of every audit carried out under subsection (4), that a report on the audit--

- (a) is prepared; and
 - (b) if not prepared by OFCOM, is provided to them.
- (6) It shall be the duty of OFCOM, in the case of every review under this section, to publish--
- (a) their conclusions on the review; and
 - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (7) The publication of anything under subsection (6) must be a publication 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 it.

71 Sharing of burden of universal service obligations

- (1) This section applies where OFCOM--
- (a) have concluded, on a review under section 70, that complying in relation to any matter with universal service conditions imposes a financial burden on a particular designated universal service provider; and
 - (b) have published that conclusion in accordance with that section.
- (2) OFCOM must determine, in the case of the designated universal service provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.
- (3) If--
- (a) OFCOM determine that it would be unfair for the designated universal service provider to bear, or to continue to bear, the whole or a part of the burden, and
 - (b) an application for a determination under this subsection is made to OFCOM by that provider,

OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting that burden.

- (4) The making of any of the following must be in accordance with regulations made by OFCOM--
- (a) a determination by OFCOM of the extent of the financial burden that exists for the designated universal service provider of complying in relation to any matter with universal service conditions;
 - (b) an application for the purposes of subsection (3)(b);
 - (c) a determination by OFCOM of whether it is or would be unfair for the designated universal service provider to bear, or to continue to bear, the burden of complying in relation to any matter with universal service conditions;
 - (d) a determination of the extent (if any) to which that is or would be unfair.
- (5) The assessment, collection and distribution of contributions under subsection (3) is not to be carried out except in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.

(6) It shall be the duty of OFCOM to exercise their power to make regulations under this section in the manner which they consider will secure that the assessment, collection and distribution of contributions under subsection (3) is carried out--

- (a) in an objective and transparent manner;
- (b) in a manner that does not involve, or tend to give rise to, any undue discrimination against particular communications providers or particular designated universal service providers, or against a particular description of them; and
- (c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition or of customer demand.

(7) Regulations made by OFCOM under this section may provide for a scheme containing the provision mentioned in subsection (5), and for any fund set up for the purposes of such a scheme, to be administered either--

- (a) by OFCOM; or
- (b) by such other person as may be specified in the regulations.

(8) A person other than OFCOM is not to be specified in regulations under this section as the administrator of such a scheme or fund unless he is a person who OFCOM are satisfied is independent of both--

- (a) the persons who are designated universal service providers; and
- (b) communications providers to whom general conditions are applicable.

(9) Section 403 applies to the powers of OFCOM to make regulations under this section.

72 Report on sharing mechanism

(1) This section applies where regulations under section 71 provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section.

(2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies--

- (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything contained in the universal service order;
- (b) the market benefits for each designated universal service provider that have accrued to him during that period from his designation and from the application to him of universal service conditions; and
- (c) the contribution made under section 71(3) by every person who has made a contribution during that period.

(3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 71.

(4) Every subsequent report must be prepared in relation to the period of twelve months beginning with the end of the period to which the previous report applied.

(5) Every report under this section--

- (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and
- (b) must be published as soon as practicable after its preparation is complete.

- (6) OFCOM are not required under this section--
- (a) to publish any matter that is confidential in accordance with subsection (7) or (8); or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) 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.
- (8) 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.
- (9) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.

Access-related conditions

73 Permitted subject-matter of access-related conditions

- (1) The only conditions that may be set under section 45 as access-related conditions are those authorised by this section.
- (2) Access-related conditions may include conditions relating to the provision of such network access and service interoperability as appears to OFCOM appropriate for the purpose of securing--
- (a) efficiency ~~on the part of communications providers and persons making associated facilities available;~~
 - (b) sustainable competition ~~between them; and~~
(ba) efficient investment and innovation; and
 - (c) the greatest possible benefit for the end-users of public electronic communications services.
- (3) Access-related conditions may include conditions appearing to OFCOM to be appropriate for securing that persons to whom the electronic communications code applies participate, ~~in cases where there are no viable alternative arrangements that may be made,~~ in arrangements for--
- (a) sharing the use of electronic communications apparatus; and
 - (b) apportioning and making contributions towards costs incurred in relation to shared electronic communications apparatus.
- (3A) The power to set access-related conditions falling within subsection (3) is to be exercised for the purpose of—
- (a) encouraging efficient investment in infrastructure; and
 - (b) promoting innovation.

~~(4) Access-related conditions may include one which--
 (a) is of a technical or operational nature;
 (b) appears to OFCOM to be appropriate for securing the proper operation of an electronic communications network in compliance with any SMP services condition falling within section 87(3); and
 (c) is applied to--
 (i) a person who is required by such an SMP services condition to confer any entitlements to network access; or
 (ii) a person on whom such an entitlement is or may be conferred in pursuance of a requirement imposed by such an SMP services condition.~~

(5) Access-related conditions may include conditions containing any provision required by section 75(2).

74 Specific types of access-related conditions

(1) The conditions that may be set by virtue of section 73(2) include conditions which, for the purpose of securing end-to-end connectivity for the end-users of public electronic communications services provided by means of a series of electronic communications networks--

- (a) impose obligations on a person controlling network access to any of those networks; and
- (b) require the interconnection of the networks.

(1A) The conditions that may be set by virtue of section 73(2) also include conditions which impose such obligations on a person controlling network access to customers as OFCOM consider necessary for the purpose of securing service interoperability.

(2) The conditions that may be set by virtue of section 73(2) also include such conditions imposing obligations on a person providing facilities for the use of application programme interfaces or electronic programme guides as OFCOM consider to be necessary for securing--

- (a) that persons are able to have access to such programme services provided in digital form as OFCOM may determine; and
- (b) that the facility for using those interfaces or guides is provided on terms which--
 - (i) are fair and reasonable; and
 - (ii) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons.

(3) In this section--

"application programme interface" means a facility for allowing software to make use, in connection with any of the matters mentioned in subsection (4), of facilities contained in other software;

"electronic programme guide" means a facility by means of which a person has access to any 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; and
- (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

"end-to-end connectivity" means the facility--

- (a) for different end-users of the same public electronic communications service to be able to communicate with each other; and
 - (b) for the end-users of different such services to be able, each using the service of which he is the end-user, to communicate with each other.
- (4) The matters mentioned in subsection (3), in the definition of "application programme interface", are--
- (a) allowing a person to have access to programme services;
 - (b) allowing a person, other than a communications provider or a person who makes associated facilities available, to make use of an electronic communications network by means of which a programme service is broadcast or otherwise transmitted;
 - (c) allowing a person to become the end-user of a description of public electronic communications service.
- (5) This section is not to be construed as restricting the provision that may be made under section 73(2).

75 Conditional access systems and access to digital services

~~(1) It shall be the duty of OFCOM, when setting a condition falling within section 73(4), to ensure that it contains all such provision as they consider appropriate for the purpose of taking account of the relevant international standards.~~

- (2) It shall be the duty of OFCOM to ensure--
- (a) that access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service; and
 - (b) that those conditions make all such provision as is required by the provision contained from time to time in Part I of Annex I to the Access Directive (conditions relating to access to digital programme services).
- (3) In this section--
- "conditional access system" means any system, facility, arrangements or technical measure under or by means of which access to programme services requires--
- (a) a subscription to the service or to a service that includes that service; or
 - (b) an authorisation to view it, or to listen to it, on a particular occasion;

"protected programme service" means a programme service the programmes included in which cannot be viewed or listened to in an intelligible form except by the use of a conditional access system.

76 Modification and revocation of conditions imposed under s 75

- (1) This section applies in the case of conditions falling within section 75(2) which have been set by OFCOM in relation to a particular person ("the system provider").
- (2) OFCOM must not give effect to a proposal to modify or revoke any of the conditions unless--

- (a) they have carried out an analysis for the purpose of determining in accordance with this Chapter whether that person is or remains a person on whom SMP services conditions are capable of being imposed;
 - (b) they have determined in consequence of that analysis that he is not; and
 - (c) they are satisfied that the modification or revocation will not have an adverse effect on any or all of the matters mentioned in subsection (3).
- (3) Those matters are--
- (a) the accessibility to any persons of services that are for the time being included in the list of must-carry services in section 64;
 - (b) the prospects for effective competition in the market for programme services provided by being broadcast or otherwise transmitted in digital form; and
 - (c) the prospects for effective competition in the markets for conditional access systems and other associated facilities.
- (4) In this section "conditional access system" has the same meaning as in section 75.

76A Information about electronic communications apparatus available for shared use

(1) OFCOM may make available to such persons as they consider appropriate information about electronic communications apparatus that in OFCOM's opinion is suitable for shared use

(2) OFCOM may impose such restrictions as they consider appropriate on the use and further disclosure of information made available under this section.

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;

(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 £50 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 Euros 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;

"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 Article 86 of the Treaty establishing the European Community.

SMP conditions: procedure

78 Circumstances required for the setting of SMP conditions

(1) For the purposes of this Chapter a person shall be taken to have significant market power in relation to a market if he enjoys a position which amounts to or is equivalent to dominance of the market.

- (2) References in this section to dominance of a market must be construed in accordance with any applicable provisions of Article 14 of the Framework Directive.
- (3) A person is to be taken to enjoy a position of dominance of a market if he is one of a number of persons who enjoy such a position in combination with each other.
- (4) A person or combination of persons may also be taken to enjoy a position of dominance of a market by reason wholly or partly of his or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that person or combination of persons.
- (5) The matters that must be taken into account in determining whether a combination of persons enjoys a position of dominance of a services market include, in particular, the matters set out in Annex II to the Framework Directive.

79 Market power determinations

- (1) Before making a market power determination, OFCOM must--
- (a) identify (by reference, in particular, to area and locality) the markets which in their opinion are the ones which in the circumstances of the United Kingdom are the markets in relation to which it is appropriate to consider whether to make the determination; and
 - (b) carry out an analysis of the identified markets.
- (2) In identifying or analysing any services market for the purposes of this Chapter, OFCOM must take due account of all applicable guidelines and recommendations which--
- (a) have been issued or made by the European Commission in pursuance of the provisions of a Community instrument; and
 - (b) relate to market identification and analysis.
- (3) In considering whether to make or revise a market power determination in relation to a services market, OFCOM must take due account of all applicable guidelines and recommendations which--
- (a) have been issued or made by the European Commission in pursuance of the provisions of a Community instrument; and
 - (b) relate to market analysis or the determination of what constitutes significant market power.
- (4) The way in which--
- (a) a market is to be identified for the purposes of this section, or
 - (b) a market power determination is to be made,

is by the publication of a notification containing the identification or determination.

- (5) Notifications for the purposes of subsection (4)--
- (a) may be given separately;
 - (b) may be contained in a single notification relating to both the identification of a market and the making of a market determination in relation to that market; or
 - (c) may be contained in a single notification under section 48(1) with respect to the setting or modification of an SMP condition and either--

- (i) the making of the market power determination by reference to which OFCOM set or modify that condition; or
- (ii) the making of that market power determination and the identification of the market in relation to which they make that determination.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.

(7) References in this section to guidelines and recommendations issued by the European Commission and to a Community instrument include references, respectively, to guidelines and recommendations issued after the commencement of this section and to a Community instrument made after the commencement of this section.

80 Proposals for identifying markets and for market power determinations

(1) Where section 80A applies, OFCOM must comply with the applicable requirements of that section and section 80B before—

- (a) identifying a market for the purposes of making a market power determination, or
- (b) making a market power determination.

(1A) Where section 80A does not apply because of subsection (2) of that section—

- (a) any identification of a market or market power determination must be temporary; and
- (b) the notification published under section 79(4) containing the identification or determination must state the period for which the identification or determination is to have effect.

(1B) Where OFCOM propose to extend or make permanent any such temporary identification or determination —

- (a) sections 80A and 80B(1) do not apply in relation to the proposal; and
- (b) subsections (2) to (8) of sections 80B apply in relation to the proposal as if the words from the beginning of subsection (2) to “appropriate” were omitted.

~~(1) Before OFCOM—~~

- ~~(a) identify a market for the purposes of making a market power determination, or~~
- ~~(b) make a market power determination,~~

~~they must publish a notification of what they are proposing to do.~~

~~(2) Notifications for the purposes of subsection (1)—~~

- ~~(a) may be given separately;~~
- ~~(b) may be contained in a single notification relating to both the identification of a market and the making of a market determination in relation to that market; or~~
- ~~(c) may be contained in a single notification under section 48(2) with respect to the setting or modification of an SMP condition and either—~~
 - ~~(i) the making of the market power determination by reference to which OFCOM are proposing to set or modify that condition; or~~

~~(ii) the making of that market power determination and the identification of the market in relation to which they are proposing to make that determination.~~

~~(3) A notification under this section relating to a proposal to identify a market or to make a market power determination must—~~

~~(a) state that OFCOM are proposing to identify that market or to make that market power determination;~~

~~(b) set out the effect of the proposal;~~

~~(c) give their reasons for making the proposal; and~~

~~(d) specify the period within which representations may be made to OFCOM about their proposal.~~

~~(4) That period must be a period of not less than one month after the day of the publication of the notification.~~

~~(5) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.~~

~~(6) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have given a notification under this section only if—~~

~~(a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and~~

~~(b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.~~

(7) The power of OFCOM to give effect to such a proposal identify a market or make a market power determination is subject to sections 82 and 83.

Domestic consultation for market identifications and market power determinations

80A.—(1) This section applies where—

(a) OFCOM propose—

(i) to identify a market for the purposes of making a market power determination; or

(ii) to make a market power determination; and

(b) (in the case of a services market) the proposed identification or determination is in OFCOM's opinion likely to result in the setting, modification or revocation of SMP **services** conditions that will have a significant impact the market.

(2) But this section does not apply where the proposal is of EU significance and in OFCOM's opinion

(a) there are exceptional circumstances; and

(b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

(3) OFCOM must publish a notification of what they are proposing to do.

(4) Notifications for the purposes of subsection (3)—

(a) may be given separately;

(b) may be contained in a single notification relating to both the identification of a market and the making of a market power determination in relation to that market; or

(c) may be contained in a single notification under section 48A(3) with respect to the setting or modification of an SMP condition and either—

(i) the making of the market power determination by reference to which OFCOM are proposing to set or modify that condition; or

(ii) the making of that market power determination and the identification of the market in relation to which they are proposing to make that determination.

(5) A notification under this section relating to a proposal to identify a market or to make a market power determination must—

(a) state that OFCOM are proposing to identify that market or to make that market power determination;

(b) set out the effect of the proposal;

(c) give their reasons for making the proposal; and

(d) specify the period within which representations may be made to OFCOM about their proposal.

(6) That period must be a period of not less than one month after the day of the publication of the notification.

(7) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM considers reasonable in those circumstances.

(8) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.

(9) OFCOM must—

(a) consider every representation about the proposal made to them during the period specified in the notification; and

(b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(10) Where the proposal is not of EU significance, OFCOM may then give effect to it, with any modifications that appear to OFCOM to be appropriate.

EU consultation for market identifications and market power determinations

80B.—(1) This section applies where, after complying with section 80A(9) in relation to a proposal of EU significance, OFCOM wish to proceed with the proposal.

(2) After making any modifications of the proposal that appear to OFCOM to be appropriate, OFCOM must send a copy of the proposal, and of a statement setting out the reasons for it, to—

(a) the European Commission;

(b) BEREC; and

(c) the regulatory authorities in every other member State.

(3) If at the end of the period of one month referred to in paragraph (3) of Article 7 of the Framework Directive no indication has been given to OFCOM by the Commission under paragraph (4) of that Article, OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate.

(4) Before giving effect to the proposal under subsection (3), OFCOM must consider any comments made by –

- (a) the Commission;
- (b) BEREC; and
- (c) any regulatory authority in any other member State.

(5) Subsections (6) to (8) apply where such an indication is given by the Commission to OFCOM during that period.

(6) If under Article 7(5)(a) of the Framework Directive the Commission requires OFCOM to withdraw the proposal, OFCOM must amend or withdraw the proposal within 6 months of the date of the Commission's decision.

(7) Where the proposal is amended under subsection (6), section 80 applies in relation to the amended proposal as if it were a new proposal.

(8) OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate—

- (a) if the Commission takes a decision to lift its reservations in accordance with paragraph (5)(b) of Article 7 of the Framework Directive; or
- (b) if at the end of the period of 2 months referred to in paragraph (4) of that Article the Commission has neither required OFCOM to withdraw the proposal under paragraph (5)(a) nor lifted its reservations under paragraph (5)(b).

Delivery of copies of notifications under sections 79 and 80A

81.—(1) OFCOM must send to the Secretary of State a copy of every notification published under section 79(4) or 80A(3).

(2) OFCOM must send to the European Commission a copy of every notification published under section 79(4) in relation to a services market.

(3) OFCOM must send to BEREC a copy of every notification published under section 79(4) where the proposal to identify the market or make a market power determination was a proposal of EU significance.

(4) Where a notification published under section 79(4) relates to a proposal to which section 80A did not apply because of subsection (2) of that section, OFCOM must send a copy of a statement setting out the reasons for the proposal and for the urgent need to act to –

- (a) the Commission;
- (b) BEREC; and
- (c) the regulatory authorities in every other member State.

81—Delivery of copies of notifications under ss 79 and 80

~~(1) OFCOM must send a copy of every notification published under section 79(4) or 80 to the Secretary of State.~~

~~(2) OFCOM must send to the European Commission a copy of every notification published under section 79(4) with respect to a market power determination in relation to a services market.~~

~~(3) OFCOM must send a copy of every notification published under section 80 which—~~

~~(a) relates to a proposal to identify a services market or to make a market power determination in relation to such a market; and~~

~~(b) in OFCOM's opinion would affect trade between member States;~~

~~to the European Commission and to the regulatory authorities of every other member State.~~

~~(4) OFCOM must, in every other case in which it appears to them appropriate to do so, send--~~

~~(a) to the European Commission, and~~

~~(b) to such of the regulatory authorities of the other member States as OFCOM think fit,~~

~~a copy of a notification published under section 80 which relates to a proposal to identify a services market or to make a market power determination in relation to such a market.~~

82 European Commission's powers in respect of proposals

~~(1) This section applies, in the case of a notification under section 80 with respect to a proposal--~~

~~(a) to identify a particular market; or~~

~~(b) to make a market power determination.~~

~~(2) If, within the representations period, OFCOM are notified by the European Commission for the purposes of Article 7(4) of the Framework Directive (market identifications that do not conform to Commission recommendations and determinations that affect trade between member States)--~~

~~(a) that the Commission considers that giving effect to the proposal would create a barrier in relation to the single European market; or~~

~~(b) that the Commission has serious doubts as to whether giving effect to the proposal would be compatible with the requirements of any Community obligations,~~

~~OFCOM are not to give effect to the proposal before the end of a further two months beginning with the end of the representations period.~~

~~(3) Where, before the end of that two month period, the European Commission makes a decision in accordance with Article 7(4) of the Framework Directive that the proposal should be withdrawn, OFCOM--~~

~~(a) must withdraw it; and~~

~~(b) shall not be entitled to give effect to it.~~

~~(4) In this section "the representations period", in relation to a notification under section 80, means the period specified in that notification for the making of representations about the proposals contained in it.~~

83 Special rules for transnational markets

(1) This section applies where a services market is for the time being identified by a decision of the European Commission under Article 15(4) of the Framework Directive as a transnational market.

(2) Where the market area includes the whole or a part of the United Kingdom, OFCOM must enter into and maintain arrangements with the other relevant regulatory authorities about--

(a) the extent to which the agreement of all the relevant regulatory authorities is required for the doing of any of the things mentioned in subsection (3); and

(b) the procedures to be followed for securing that agreement where it is required.

- (3) Those things are--
- (a) the identification of the whole or a part of the market as a market in relation to which it is appropriate to determine whether a person has significant market power;
 - (b) the making of such a determination in relation to the whole or a part of the market;
 - (c) the setting of a condition the setting of which requires such a determination to have been made;
 - (d) the modification or revocation of such a condition.
- (4) OFCOM must not do any of the things mentioned in subsection (3) except in accordance with arrangements maintained under that subsection.
- (5) Those arrangements may include arrangements requiring OFCOM, when doing any of those things, to comply with--
- (a) a decision made, by one or more other regulatory authorities; or
 - (b) a decision made by a person appointed under the arrangements to act on behalf of some or all of the relevant regulatory authorities.
- (6) In this section--
- "market area", in relation to a services market identified by the European Commission as a transnational market, means the area identified by that Commission as the area for which the market operates; and
- "relevant regulatory authorities", in relation to such a market, means the regulatory authorities for each member State the whole or a part of which is comprised in the market area.

84 Review of services market identifications and determinations

- (1) This section applies where OFCOM have identified and analysed a services market for the purposes of making a market power determination.
- (2) OFCOM ~~must, at such intervals as they consider appropriate~~ may (and, when required to do so by section 84A, must), carry out further analyses of the identified market for one or both of the following purposes--
- (a) reviewing market power determinations made on the basis of an earlier analysis;
 - (b) deciding whether to make proposals for the modification of SMP conditions set by reference to a market power determination made on such a basis.
- ~~(3) It shall be the duty of OFCOM to carry out such a further analysis of a services market as soon as reasonably practicable after recommendations are made by the European Commission that affect the matters that were taken into account, or could have been taken into account, in the case of the last analysis by OFCOM of that market.~~
- (4) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they must revoke every SMP services condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.
- (5) Before carrying out a further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out an earlier analysis.
- (6) Where, on such a review, OFCOM conclude that the appropriate markets have changed--

- (a) they must identify the markets they now consider to be the appropriate ones; and
 - (b) those markets shall be the identified markets for the purposes of the further analysis.
- (7) Sections 79 to 83 apply--
- (a) in relation to the identification of a services market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
 - (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

Timing of services market identifications and determinations

84A.—(1) This section makes provision about the exercise by OFCOM of their powers—

- (a) to identify and analyse services markets;
- (b) to make and review market power determinations in respect of such markets; and
- (c) to set, modify and revoke SMP **services** conditions by reference to such determinations.

(2) Where under Article 15(1) of the Framework Directive the European Commission has adopted a revised recommendation identifying a services market not previously notified to the Commission, OFCOM must ensure that within the specified period they have—

- (a) carried out any identification and analysis of markets that is necessary in consequence of the recommendation; and
- (b) sent the Commission copies of any resulting proposals with respect to market identification, market power determinations and SMP services conditions.

(3) Where, following the identification and analysis of a services market, OFCOM have made a market power determination in relation to it, they must ensure that within the specified period they have—

- (a) carried out a further analysis of the market and reviewed the identification and determination made on the basis of the earlier analysis; and
- (b) sent the Commission copies of any resulting proposals with respect to market identification, market power determinations and SMP services conditions.

(4) Subsection (3) applies only where the market **power** determination was made after 25 May 2011.

(5) Where it appears to OFCOM that they are unlikely to be able to comply with the requirements of subsection (2) or (3) within the specified period, they may request assistance from BEREC under Article 16(7) of the Framework Directive.

(6) Where OFCOM request such assistance—

- (a) they must inform the Commission of the request;
- (b) subsection (2) or (as the case may be) (3) applies in the case in question as if the words “within the specified period” were omitted; and
- (c) within six months of the assistance being provided they must send copies of any resulting proposals to the Commission.

(7) In this section “the specified period” means—

- (a) in the case of subsection (2), the period of **2** years from the adoption of the recommendation; and

(b) in the case of subsection (3), the period of 3 years from the publication under section 79(4) of the notification of the market power determination made on the basis of the earlier analysis, subject to any extension of that period under Article 16(6)(a) of the Framework Directive.

85 Review of apparatus market identifications and determinations

(1) This section applies where OFCOM have identified and analysed an apparatus market for the purposes of making a market power determination.

(2) OFCOM must, at such intervals as they consider appropriate, carry out further analyses of the identified market for one or both of the following purposes--

- (a) reviewing market power determinations made on the basis of an earlier analysis;
- (b) deciding whether to make proposals for the modification of SMP conditions set by reference to any such market power determination.

(3) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they shall revoke every SMP apparatus condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.

(4) Before carrying out any further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out any earlier analysis.

(5) Where on such a review OFCOM conclude that the appropriate markets have changed--

- (a) they shall identify the markets they now consider to be the appropriate ones; and
- (b) those markets shall be the identified markets for the purposes of the further analysis.

(6) Where on such a review OFCOM conclude that there is no person at all with significant market power in relation to the identified market--

- (a) they must so inform the Secretary of State; and
- (b) the Secretary of State may by order remove or restrict OFCOM's power under this Chapter to set SMP apparatus conditions by reference to that market.

(7) Sections 79, ~~80 and 81(1)~~80, 80A and 81(1) apply--

- (a) in relation to the identification of a apparatus market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
- (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

86 Cases where review required

(1) OFCOM must not set an SMP services condition by a notification which does not also make the market power determination by reference to which the condition is set unless--

- (a) the condition is set by reference to a market power determination which has been reviewed under section 84 and, in consequence of that review, is confirmed in the notification setting the condition; or

(b) the condition is set by reference to a market power determination made in relation to a market in which OFCOM are satisfied there has been no material change since the determination was made.

(2) OFCOM must not modify or revoke SMP services conditions applying to a person except in a case falling within subsection (3) or (4).

(3) The first case is where, for the purpose of determining whether to make the modification or revocation, OFCOM have--

- (a) carried out a further analysis under section 84 of the market in question; and
- (b) reviewed the market power determination for the time being in force in that person's case.

(4) The second case is where OFCOM are satisfied that there has not--

- (a) in the case of an unmodified condition, since the condition was set, or
- (b) in any other case, since the condition was last modified,

been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.

(5) OFCOM must not modify SMP apparatus conditions applying to a person except where, for the purpose of determining whether to make the modification or revocation, they have--

- (a) carried out a further analysis under section 85 of the market in question; and
- (b) reviewed the market power determination for the time being in force in that person's case.

(6) A change is a material change for the purposes of subsection (1) or (4) if it is one that is material to--

- (a) the setting of the condition in question; or
- (b) the modification or revocation in question.

SMP services conditions: subject-matter

87 Conditions about network access etc

(1) Where OFCOM have made a determination that a person to whom this section applies ("the dominant provider") has significant market power in an identified services market, they shall--

- (a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the relevant network or relevant facilities; and
- (b) apply those conditions to that person.

(2) This section applies to--

- (a) a person who provides a public electronic communications network; and
- (b) a person who makes available facilities that are associated facilities by reference to such a network.

(3) This section authorises SMP conditions requiring the dominant provider to give such entitlements as OFCOM may from time to time direct as respects--

- (a) the provision of network access to the relevant network;
- (b) the use of the relevant network; and
- (c) the availability of the relevant facilities.

(4) In determining what conditions authorised by subsection (3) to set in a particular case, OFCOM must take into account, in particular, the following factors--

- (a) the technical and economic viability (including the viability of other network access products, whether provided by the dominant provider or another person), having regard to the state of market development, of installing and using facilities that would make the proposed network access unnecessary;
- (b) the feasibility of the provision of the proposed network access;
- (c) the investment made by the person initially providing or making available the network or other facility in respect of which an entitlement to network access is proposed (taking account of any public investment made);
- (d) the need to secure effective competition (including, where it appears to OFCOM to be appropriate, economically efficient infrastructure based competition) in the long term;
- (e) any rights to intellectual property that are relevant to the proposal; and
- (f) the desirability of securing that electronic communications services are provided that are available throughout the member States.

(5) The conditions authorised by subsection (3) may include provision--

- (a) for securing fairness and reasonableness in the way in which requests for network access are made and responded to; and
- (b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions.

(5A) The SMP conditions authorised by this section also include a condition which –

- (a) is of a technical or operational nature; and
- (b) appears to OFCOM to be appropriate for securing the proper operation of an electronic communications network in compliance with a condition under subsection (3).

(5B) A condition falling within subsection (5A) may provide that compliance with the condition is not required unless a person on whom an entitlement is or may be conferred in pursuance of a requirement imposed by a condition under subsection (3) fulfils such technical or operational requirements as may be specified by OFCOM.

(5C) It shall be the duty of OFCOM, when setting a condition falling within subsection (5A), to ensure that it contains all such provision as they consider appropriate for the purpose of taking account of the relevant international standards.

(6) The SMP conditions authorised by this section also include one or more of the following--

- (a) a condition requiring the dominant provider not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with network access to the relevant network or with the availability of the relevant facilities;
- (b) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;

- (c) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which he is willing to enter into an access contract;
- (d) a condition requiring the terms and conditions on which the dominant provider is willing to enter into an access contract to include such terms and conditions as may be specified or described in the condition;
- (e) a condition requiring the dominant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which he is willing to enter into an access contract.

(7) The SMP conditions authorised by this section also include conditions requiring the dominant provider to maintain a separation for accounting purposes between such different matters relating--

- (a) to network access to the relevant network, or
- (b) to the availability of the relevant facilities,

as OFCOM may from time to time direct.

(8) The SMP conditions authorised by subsection (7) include conditions imposing requirements about the accounting methods to be used in maintaining the separation.

(9) The SMP conditions authorised by this section also include (subject to section 88) conditions imposing on the dominant provider--

- (a) such price controls as OFCOM may direct in relation to matters connected with the provision of network access to the relevant network, or with the availability of the relevant facilities;
- (b) such rules as they may make in relation to those matters about the recovery of costs and cost orientation;
- (c) such rules as they may make for those purposes about the use of cost accounting systems; and
- (d) obligations to adjust prices in accordance with such directions given by OFCOM as they may consider appropriate.

(10) The SMP conditions authorised by subsection (9) include conditions requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations imposed by virtue of that subsection.

(11) Where OFCOM set a condition authorised by this section which imposes rules on the dominant provider about the use of cost accounting systems, it shall be their duty also to set, and to apply to him, an SMP condition which imposes on him an obligation--

- (a) to make arrangements for a description to be made available to the public of the cost accounting system used in pursuance of that condition; and
- (b) to include in that description details of--
 - (i) the main categories under which costs are brought into account for the purposes of that system; and
 - (ii) the rules applied for the purposes of that system with respect to the allocation of costs.

(12) In this section--

"access contract" means--

- (a) a contract for the provision by a person to whom this section applies to another person of network access to the relevant network; or

- (b) a contract under which the relevant facilities are made available by a person to whom this section applies to another person;

"the relevant facilities", in relation to a person to whom this section applies, means the associated facilities made available by that person in relation to a public electronic communications network; and

"the relevant network", in relation to such a person, means the public electronic communications network provided by him.

88 Conditions about network access pricing etc

- (1) OFCOM are not to set an SMP condition falling within section 87(9) except where--
- (a) it appears to them from the market analysis carried out for the purpose of setting that condition that there is a relevant risk of adverse effects arising from price distortion; and
 - (b) it also appears to them that the setting of the condition is appropriate for the purposes of--
 - (i) promoting efficiency;
 - (ii) promoting sustainable competition; and
 - (iii) conferring the greatest possible benefits on the end-users of public electronic communications services.
- (2) In setting an SMP condition falling within section 87(9) OFCOM must take account of the extent of the investment in the matters to which the condition relates of the person to whom it is to apply.
- (3) For the purposes of this section there is a relevant risk of adverse affects arising from price distortion if the dominant provider might--
- (a) so fix and maintain some or all of his prices at an excessively high level, or
 - (b) so impose a price squeeze,

as to have adverse consequences for end-users of public electronic communications services.

- (4) In considering the matters mentioned in subsection (1)(b) OFCOM may--
- (a) have regard to the prices at which services are available in comparable competitive markets;
 - (b) determine what they consider to represent efficiency by using such cost accounting methods as they think fit.
- (5) In this section "the dominant provider" has the same meaning as in section 87.

89 Conditions about network access in exceptional cases

- (1) This section applies where--
- (a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market;
 - (b) that person is the provider of an electronic communications network or a person who makes associated facilities available; and

- (c) OFCOM consider that there are exceptional circumstances making it appropriate for conditions with respect to the provision of network access to be applied to the dominant provider in addition to those that are required to be or may be applied to him apart from this section.
- (2) OFCOM may set the additional SMP conditions and apply them to the dominant provider if--
- (a) they have submitted the additional conditions to the European Commission for approval; and
 - (b) the Commission has approved the imposition on the dominant provider of the obligations contained in those conditions.

Functional separation

89A.—(1) This section applies where—

- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market; —**
- (b) that person is the provider of a public electronic communications network or a person who makes available facilities that are associated facilities by reference to such a network;**
- (c) it appears to OFCOM that the setting of conditions applying to the dominant provider under sections 87 and (and, where OFCOM think it appropriate, section 88) has failed to address competition problems identified by OFCOM in carrying out a market analysis for the purpose of setting or modifying those conditions; and**
- (d) OFCOM have identified important and persisting competition problems or market failures in relation to the provision of network access.**

(2) OFCOM may set an SMP services condition (referred to in this section and section 89B as a “functional separation condition”) requiring the dominant provider to transfer activities relating to the provision of network access to an independently operating business entity which is a part of the dominant provider.

(3) Where a functional separation condition is impose on the dominant provider, the products or services specified in the condition must be given to the dominant provider and to other person –

- (a) on the same timescales, terms and conditions, including those relating to price and service levels, and**
- (b) by means of the same systems and processes.**

(4) A functional separation condition must, where relevant, specify—

- (a) the precise nature and level of separation, specifying in particular the legal status of the entity to which activities are transferred;**
- (b) an identification of the assets of that entity and the products or services to be supplied by it;**
- (c) the governance arrangements (including incentive structures) to ensure the independence of the staff employed in that entity;**
- (d) rules for ensuring compliance with the obligations imposed by the condition;**
- (e) rules for ensuring transparency of operational procedures, in particular towards persons, other than the dominant provider, who in OFCOM’S opinion are likely to be affected by the condition ; and**
- (f) a monitoring programme to ensure compliance, including a requirement for the publication of an annual report.**

Functional separation conditions: consultation and notification

89B.—(1) Where OFCOM propose to apply a functional separation condition to a person, they must submit their proposal, including the draft functional separation condition, to the European Commission.

(2) The proposal must set out—

(a) evidence justifying the conclusions mentioned in section 89A(1)(c) and (d);

(b) a reasoned assessment that there is little or no prospect of effective and sustainable infrastructure based competition within a reasonable time frame;

(c) an analysis of the expected impact of the condition on—

(i) OFCOM;

(ii) the person on whom the condition is to be imposed;

(iii) the staff of the entity to which activities are to be transferred;

(iv) the electronic communications sector as a whole;

(v) incentives to invest in the electronic communications sector, particularly with regard to the need to ensure social and territorial cohesion;

(vi) competition in the services market affected by the condition; and

(vii) other person who in OFCOM's opinion are likely to be affected by the condition, including, in particular, consumers; and

(d) an analysis of the reasons why a functional separation condition would be the most effective means of addressing important and persisting competition problems or market failures identified by OFCOM.

(3) OFCOM may set the functional separation condition and apply it to a person if—

(a) the Commission has approved the imposition on the person of the obligations contained in the condition, and

(b) OFCOM have considered the impact that the obligations contained in the condition and approved by the Commission are likely to have on SMP services conditions set in relation to the services markets which, in OFCOM's opinion, will be affected by the proposed condition.

(4) A proposal for a functional separation condition is to be submitted to the European Commission under this section before OFCOM carry out a consultation under section 48A in relation to that condition.

Obligation to notify OFCOM of voluntary separation

89C.—(1) This section applies where—

(a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market;

(b) the dominant provider person is the provider of a public electronic communications network or a person who makes associated facilities available; and

(c) the dominant provider decides to transfer a substantial part or all of the dominant provider's local access network assets to an independently operating business entity (which may be a part of the dominant provider or another person) for the purpose specified in subsection (2).

(2) The purpose is to use the assets to provide products or services to the dominant provider and to other persons-

(a) on the same timescales, terms and conditions, including those relating to price and service levels, and

(b) by means of the same systems and processes.

(3) The dominant provider must notify OFCOM of –

(a) the decision to transfer the assets;

(b) any changes to its intentions; and

(c) the taking effect of the transfer.

(5) Where Ofcom receive a notification under this section, they must, as soon as reasonably practicable, consider the impact that the transfer is likely to have on SMP services conditions set in relation to the services market which, in OFCOM's opinion, will be affected by the proposed transfer.

~~90 Conditions about carrier selection and pre-selection~~

~~(1) This section applies where--~~

~~(a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market; and~~

~~(b) it appears to OFCOM that the market is a market relating to services for the provision of public electronic communications networks for use by means of connections at fixed locations.~~

~~(2) It shall be the duty of OFCOM to set, and to apply to the dominant provider, such SMP conditions authorised by this section as they think fit.~~

~~(3) The SMP conditions authorised by this section are conditions requiring the dominant provider to do one or both of the following--~~

~~(a) to make a relevant connection facility available to every person to whom he provides a public electronic communications service;~~

~~(b) for the purpose of making such a connection facility available to such persons, to make facilities for interconnection available to a person providing an electronic communications service.~~

~~(4) Where OFCOM set a condition requiring the dominant provider to make a relevant connection facility available, they shall also set such SMP conditions as they consider appropriate--~~

~~(a) with respect to the relationship to costs of any prices fixed for the use of the facility; and~~

~~(b) for the purpose of securing that prices and other charges imposed on the persons to whom public electronic communications services are provided by the dominant provider do not constitute a disincentive to the use of the facility.~~

~~(5) Where OFCOM set conditions authorised by this section, those conditions may include provision imposing obligations as to the manner in which one or both of the following are to be made available in accordance with the conditions--~~

~~(a) the relevant connection facility in question;~~

~~(b) the facilities for interconnection that are to be made available to a person providing an electronic communications service.~~

~~(6) In this section "relevant connection facility" is a facility which--~~

~~(a) allows a person to whom a public electronic communications service is provided by means of an electronic communications network to select which public electronic communications service provided wholly or partly by means of that network is the service that he wishes to use; and~~

~~(b) enables that selection to be made either--~~

~~(i) by the use of a telephone number on each separate occasion on which a selection is made; or~~

~~(ii) by designating in advance the selection that is to apply on every occasion when no such selection as is mentioned in sub-paragraph (i) is made.~~

91 Conditions about regulation of services etc for end-users

(1) Where--

(a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market ("the relevant market"),

(b) the relevant market is one for the end-users of public electronic communications services that are available in that market, and

(c) it appears to OFCOM that the test in subsection (2) is satisfied in the case of that provider,

they shall set, and apply to that provider, such SMP conditions authorised by this section as they consider appropriate.

(2) That test is that OFCOM are unable, by the setting of conditions of the sorts specified in subsection (3), to perform, or fully to perform, their duties under section 4 in relation to the market situation in the relevant market.

(3) The sorts of conditions referred to in subsection (2) are--

(a) access-related conditions; and

(b) SMP conditions authorised or required by sections 87 to 8990.

(4) The reference in subsection (2) to the market situation in the relevant market is a reference to the situation revealed by such market analyses of that market as may have been carried out for the purposes of this Chapter.

(5) The SMP conditions authorised by this section are conditions imposing on the dominant provider such regulatory controls as OFCOM may from time to time direct in relation to the provision by that provider of any public electronic communications service to the end-users of that service.

(6) Where OFCOM set a condition which is authorised by this section and imposes regulatory control on tariffs or other matters to which costs are relevant, they shall also set, and apply to the dominant provider, an SMP condition which requires him, to the extent that they consider it appropriate--

(a) to use such cost accounting systems as may be determined by them;

(b) to have the use of those systems audited annually by a qualified auditor; and

(c) to publish an annual statement about compliance by the dominant provider with the obligations imposed by virtue of paragraph (a).

~~(7) It shall be the duty of OFCOM to provide the European Commission with all such information as the Commission requires them to provide about--~~

~~(a) conditions authorised by this section that are set by OFCOM; and~~

~~(b) the cost accounting systems used, by the persons to whom those conditions apply, in relation to the services regulated in accordance with the conditions.~~

(8) In this section "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 (6)(b) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

~~92 Conditions about leased lines~~

~~(1) This section applies where--~~

~~(a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market; and~~

~~(b) it appears to OFCOM that the market in relation to which that market power determination has been made is a market relating to the provision of any such leased lines as are for the time being identified by the European Commission in the List of Standards published in the Official Journal of the European Communities.~~

~~(2) It shall be the duty of OFCOM to set, and to apply to the dominant provider, such SMP conditions authorised by this section as they consider appropriate.~~

~~(3) The SMP conditions authorised by this section are conditions for applying, so far as required by the provisions for the time being contained in Annex VII to the Universal Service Directive, the principles of non-discrimination, cost orientation and transparency in relation to the leased lines identified as mentioned in subsection (1).~~

~~(4) In this section "leased line" means an electronic communications service the provision of which consists in the reservation of a fixed amount of transmission capacity between fixed points on the same or different electronic communications networks.~~

SMP apparatus conditions: subject-matter

93 Conditions about apparatus supply

(1) Where OFCOM have made a determination that a person ("the dominant supplier") has significant market power in an identified apparatus market, they may--

- (a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the supply of electronic communications apparatus; and
- (b) apply those conditions to that person.

(2) This section authorises the setting of SMP conditions of each of the following descriptions--

- (a) conditions requiring the dominant supplier to maintain such a separation for accounting purposes between matters relating to the supply of electronic communications apparatus and other matters as may be described in the conditions;

- (b) conditions imposing requirements about the accounting methods to be used in maintaining the separation; and
 - (c) conditions imposing such rules as OFCOM may make, for the purpose of securing the maintenance of the separation, about the use of cost accounting systems.
- (3) This section also authorises the setting of SMP conditions imposing price controls in relation to the hiring of telephones which are hardwired to an electronic communications network.
- (4) Conditions set under this section must not make provision in relation to the supply of electronic communications apparatus unless the apparatus is of a description of apparatus as respects the supply of which the dominant supplier has been found to have significant market power.
- (5) For the purposes of this section a telephone is hardwired to an electronic communications network where, in order for it to be used with that network--
- (a) it has to be physically attached to apparatus comprised in the network; and
 - (b) the attachment has to be effected by a process that requires the use of a tool.

Enforcement of conditions

94 Notification of contravention of SMP apparatus conditions

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, ~~a condition set under section 45~~an SMP apparatus condition, they may give that person a notification under this section.
- (2) A notification under this section is one which--
- (a) sets out the determination made by OFCOM;
 - (b) specifies the condition and contravention in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (3) Those things are--
- (a) making representations about the matters notified;
 - (b) complying with notified conditions of which he remains in contravention; and
 - (c) remedying the consequences of notified contraventions.
- (4) Subject to subsections (5) to (7) and section 98(3), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for doing those things either--
- (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (7) The person notified shall also have a shorter period if--

- (a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification.
- (8) A notification under this section--
- (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this section has been given to a person in respect of a contravention of a condition, OFCOM may give a further notification in respect of the same contravention of that condition if, and only if--
- (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.
- (10) OFCOM must not give a notification under this section in a case in which--
- (a) they decide that a more appropriate way of proceeding in relation to the contravention in question would be under the Competition Act 1998 (c 41); and
 - (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it.
- (11) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if--
- (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same condition; and
 - (b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 95(2) or 96(2) that the contravention to which the previous notification related did occur.

95 Enforcement notification for contravention of conditions

- (1) This section applies where--
- (a) a person ("the notified provider") has been given a notification under section 94;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may give the notified provider an enforcement notification if they are satisfied--

- (a) that he has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 94; and
 - (b) that he has not, during the period allowed under that section, taken all such steps as they consider appropriate--
 - (i) for complying with that condition; and
 - (ii) for remedying the consequences of the notified contravention of that condition.
- (3) An enforcement notification is a notification which imposes one or both of the following requirements on the notified provider--
- (a) a requirement to take such steps for (a) complying with the notified condition as may be specified in the notification;
 - (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.
- (4) A decision of OFCOM to give an enforcement notification to a person--
- (a) must be notified by them to that person, together with the reasons for the decision, no later than one week after the day on which it is taken; and
 - (b) must fix a reasonable period for the taking of the steps required by the notification.
- (5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty shall be enforceable in civil proceedings by OFCOM--
- (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c 36); or
 - (c) for any other appropriate remedy or relief.

96 Penalties for contravention of conditions

- (1) This section applies (in addition to section 95) where--
- (a) a person ("the notified provider") has been given a notification under section 94;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified provider if he--
- (a) has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 94; and
 - (b) has not, during the period allowed under that section, taken the steps OFCOM consider appropriate--
 - (i) for complying with the notified condition; and
 - (ii) for remedying the consequences of the notified contravention of that condition.

- (3) Where a notification under section 94 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification given under section 95 in respect of the notified contravention.
- (6) Where OFCOM impose a penalty on a person under this section, they shall--
- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section--
- (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

Notification of contravention of condition other than SMP apparatus condition

96A.—(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a condition (other than an SMP apparatus condition) set under section 45, they may give that person a notification under this section.

(2) A notification under this section is one which—

- (a) sets out the determination made by OFCOM;
- (b) specifies the condition and contravention in respect of which that determination has been made;
- (c) specifies the period during which the person notified has an opportunity to make representations;
- (d) specifies the steps that OFCOM think should be taken by the person in order to—
 - (i) comply with the condition;
 - (ii) remedy the consequences of the contravention;
- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 96B;
- (f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 100; and
- (g) where the contravention relates to a condition set under sections 87 to 91, specifies any direction which OFCOM are minded to give under section 100A.

(3) A notification under this section—

- (a) may be given in respect of more than one contravention; and
- (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(4) Where a notification under this section has been given to a person in respect of a contravention of a condition, OFCOM may give a further notification in respect of the same contravention of that condition if, and only if—

- (a) the contravention is one occurring after the time of the giving of the earlier notification;
- (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

(5) OFCOM must not give a notification under this section in a case in which—

- (a) they decide that a more appropriate way of proceeding in relation to the contravention in question would be under the Competition Act 1998; and
- (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it.

Penalties for contravention of conditions

96B.—(1) This section applies where a person is given a notification under section 96A which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after-

- (a) the giving of a confirmation decision under section 96C(4)(c) which requires immediate action; or
- (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(5) The amount of a penalty under subsection (4) is to be such amount not exceeding £20,000 per day as OFCOM determine to be –

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

Enforcement of notification under section 96A

96C.—(1) This section applies where—

- (a) a person has been given a notification under section 96A;
- (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
- (c) the period allowed for the making of representations has expired.

(2) OFCOM may—

- (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 96A; or
- (b) inform the person that they are satisfied with the person’s representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.

(4) A confirmation decision—

(a) must be given to the person without delay;

(b) must include reasons for the decision;

(c) may require immediate action by the person to comply with requirements of a kind mentioned in section 96A(2)(d), or may specify a period within which the person must comply with those requirements; and

(d) may require the person to pay—

 (i) the penalty specified in the notification under section 96A, or

 (ii) such other lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and

may specify the period within which the penalty is to be paid.

(5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.

(6) That duty is enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or

(c) for any other appropriate remedy or relief.

(7) A penalty imposed by a confirmation decision—

(a) must be paid to OFCOM; and

(b) if not paid within the period specified by them, is to be recoverable by them accordingly.

97 Amount of penalty under s 96 or 96A

(1) The amount of a penalty imposed under section 96 or notified under section 96A (other than a penalty falling within section 96B(4)) is to be such amount not exceeding ten per cent of the turnover of the ~~notified provider's~~person's relevant business for the relevant period as OFCOM determine to be--

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(2) In making ~~that a~~ determination in relation to a penalty imposed under section 96 OFCOM must have regard to--

(a) any representations made to them by the ~~notified provider~~person;

(b) any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94; and

(c) any steps taken by him for remedying the consequences of those contraventions.

(3) For the purposes of this section--

(a) the turnover of a person's relevant business for a period shall be calculated in accordance with such rules as may be set out by order made by the Secretary of State; and

(b) provision may also be made by such an order for determining what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made.

(4) No order is to be made containing provision authorised by subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(5) In this section--

"relevant business" means (subject to the provisions of an order under subsection (3) and to subsections (6) and (7)) so much of any business carried on by the ~~notified provider~~person as consists in any one or more of the following--

- (a) the provision of an electronic communications network;
- (b) the provision of an electronic communications service;
- (c) the making available of associated facilities;
- (d) the supply of directories for use in connection with the use of such a network or service;
- (e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service;
- (f) any business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on;

"relevant period", in relation to a contravention by a person of a condition set under section 45, means--

- (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 94 or 96A;
- (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and
- (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on.

(6) In the case of a contravention of an SMP apparatus condition the relevant business is so much of any business carried on by the person in respect of whose contravention the penalty is imposed as consists in the supply of electronic communications apparatus.

(7) So much of any business of a person on whom the penalty is imposed as falls within paragraph (f) of the definition of a relevant business shall be disregarded for the purposes of this section except in relation to--

- (a) a contravention of an access-related condition imposed in respect of that business; or
- (b) a contravention of an enforcement notification given under section 95 or a confirmation decision under section 96C relating to such a condition.

~~(8) In this section "the notified provider" has the same meaning as in section 96.~~

98 Power to deal with urgent cases

(1) This section applies where OFCOM determine--

- (a) that they are entitled to give a notification under section [94-96A](#) with respect to a contravention by a person ("the contravening provider") of a condition set under section 45, ~~other than an SMP apparatus condition;~~
 - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.
- (2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of--
- (a) a serious threat to the safety of the public, to public health or to national security;
 - (b) serious economic or operational problems for persons (other than the contravening provider) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- ~~(3) OFCOM may, in a notification under section 94 with respect to the contravention, specify a period of less than one month for doing the things mentioned in subsection (3) of that section.~~
- (4) OFCOM shall ~~also~~ have power to give to the contravening provider--
- (a) a direction that his entitlement to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.
- (5) A direction under subsection (4)--
- (a) must specify the networks, services and facilities 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.
- (6) A direction under subsection (4)--
- (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 his customers.
- (7) 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.
- (8) OFCOM have power to revoke a direction given under subsection (4)--
- (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 networks, services or facilities, or parts of a network, service or facility, as they may determine.

99 Confirmation of directions under s 98

(1) As soon as reasonably practicable after giving a direction under section 98(4), OFCOM must give the person to whom it is given--

- (a) an opportunity of making representations to them about the grounds on which it was given and its effect; and
- (b) an opportunity of proposing steps to remedy the situation.

(2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction under section 98(4) was given), they must determine--

- (a) whether the contravention providing the grounds for the giving of the direction did occur; and
- (b) whether the circumstances made it an urgent case justifying the giving of the direction.

(2A) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM—

- (a) require additional time to consider representations received; or
- (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).

(3) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(4) If not, they must exercise their power to revoke it.

(5) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.

(6) Conditions included in a direction by virtue of section 98(7) have effect only if the direction is confirmed.

100 Suspending service provision for contraventions of conditions

~~(1) OFCOM may give a direction under this section to a person who is a communications provider or makes associated facilities available ("the contravening provider") if they are satisfied--~~

~~(a) that he is or has been in serious and repeated contravention of conditions set under section 45, other than an SMP apparatus condition;~~

~~(b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 or both, to secure compliance with the contravened conditions has failed; and~~

~~(c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.~~

(1) OFCOM may give a direction under this section to a person where—

- (a) either Condition A or Condition B is satisfied in relation to the person; and

(b) the giving of a direction is appropriate and proportionate to the contravention in respect of which it is imposed.

(1A) Condition A is that—

(a) the person is in serious contravention of a condition set under section 45, other than SMP apparatus conditions, and

(b) the proposed direction has been notified to the person under section 96A and confirmed by a confirmation decision under section 96C.

(1B) Condition B is that—

(a) the person has repeatedly contravened a condition set under section 45, other than SMP apparatus conditions, and

(b) an attempt, by the imposition of penalties or the giving of notifications under section 96A and confirmation decisions under section 96C, or both, to secure compliance with the contravened conditions has failed.

(1C) Where Condition A is satisfied, a direction under this section is given where OFCOM give a confirmation decision under section 96C to the person in respect of a direction proposed in a notification under section 96A.

(1D) Where Condition B is satisfied, a direction under this section is to be given in accordance with the procedure set out in section 102.

(2) A direction under this section is--

(a) a direction that the entitlement of the ~~contravening provider~~ person to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or

(b) a direction that that entitlement is restricted in the respects set out in the direction.

(3) A direction under this section--

(a) must specify the networks, services and facilities 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.

(4) 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~~ person as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.

(5) 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~~ person'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.

(6) 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 networks, services or facilities, or parts of a network, service or facility, as they may determine.

(7) For the purposes of this section there are repeated contraventions by a person of conditions set under section 45 to the extent that--

- (a) ~~in the case of a previous notification of a contravention given to that person under section 96A, OFCOM have given a confirmation decision to that person under section 96C(2) in respect of the contravention in the case of a previous notification given to that person under section 94, OFCOM have determined for the purposes of section 95(2) or 96(2) that such a contravention did occur;~~
- (b) in the period of ~~twelve~~ 24 months following the ~~giving of that confirmation decision~~ day of the making of that determination, one or more further ~~notifications~~ confirmation decisions have been given to ~~that the~~ person in respect of contraventions of a condition set under section 45; and
- (c) the previous ~~notification~~ confirmation decision and the subsequent ones all relate to contraventions of the same condition (whether the same contravention or different contraventions).

Suspending service provision for breach of SMP services condition

100A.—(1) OFCOM may give a direction under this section to a person who provides a public electronic communications network, or a person who makes available facilities that are associated facilities by reference to such a network, if OFCOM are satisfied that—

- (a) the person is or has been in contravention of conditions set under sections 87 to 91, and
- (b) the provision of an electronic communications service by the person on that public electronic communications network could result in significant harm to competition.

(2) A direction under this section is given where OFCOM give a confirmation decision under section 96C to the person in respect of a direction proposed in a notification under section 96A.

(3) A direction under this section is—

- (a) a direction that the entitlement of the person to provide an electronic communications service over the public electronic communications network to which the contravened condition relates is suspended (either generally or in relation to particular services); or
- (b) a direction that the person may not begin to provide an electronic communications service over the public electronic communications network to which the contravened provision relates.

(4) A direction under this section—

- (a) must specify the electronic communications services to which it relates, and
- (b) takes effect for an indefinite period beginning with the time at which a confirmation decision relating to the direction is given to the person under section 96C.

(5) A direction under this section—

- (a) may provide for a suspension or prohibition to take effect only at a time determined by or in accordance with the terms of the direction; and
- (b) in connection with a suspension or prohibition contained in the direction or with the postponement of its effect, may impose such conditions on the person to whom it is given as appear to OFCOM to be appropriate for the purpose of protecting that person'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 person'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, or parts of a service, as they may determine.

101 Suspending apparatus supply for contraventions of conditions

(1) OFCOM may give a direction under this section to a person who supplies electronic communications apparatus ("the contravening supplier") if they are satisfied--

(a) that he is or has been in serious and repeated contravention of any SMP apparatus conditions;

(b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 or both, to secure compliance with the contravened conditions has failed; and

(c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.

(2) A direction under this section is--

(a) a direction to the contravening supplier to cease to act as a supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description); or

(b) a direction imposing such restrictions as may be set out in the direction on the supply by that supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description).

(3) A direction under this section takes effect, except so far as it otherwise provides, for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(4) A direction under this section--

(a) may provide for a prohibition or restriction to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with a prohibition or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening supplier as appear to OFCOM to be appropriate for the purpose of protecting that supplier's customers.

(5) Those conditions may include a condition requiring the making of payments--

(a) by way of compensation for loss or damage suffered by the contravening supplier'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.

(6) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may at any time 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 apparatus or descriptions of apparatus as they may determine.

(7) For the purposes of this section there are repeated contraventions by a person of SMP apparatus conditions to the extent that--

- (a) in the case of a previous notification given to that person under section 94, OFCOM have determined for the purposes of section 95(2) or 96(2) that such a contravention did occur;
- (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 an SMP apparatus condition; and
- (c) the previous notification and the subsequent ones all relate to contraventions of the same condition (whether the same contravention or different contraventions).

102 Procedure for directions under ss 100 and 101

(1) Except in an urgent case, or a case where Condition A in section 100 is satisfied, OFCOM are not to give a direction under section 100 or 101 unless they have--

- (a) notified the contravening provider or contravening supplier of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;
- (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and
- (c) considered every representation and proposal made to them during the period allowed by them for the contravening provider or the contravening supplier to take advantage of that opportunity.

~~(2) That period must be one ending not less than one month after the day of the giving of the notification.~~

(2) That period must be--

- (a) in relation to a direction under section 100, such reasonable period as OFCOM may determine, and
- (b) in relation to a direction under section 101, a period ending not less than one month after the day of the giving of the notification.

(3) As soon as practicable after giving a direction under section 100 or 101 in an urgent case, OFCOM must, provide the contravening provider or contravening supplier with an opportunity of--

- (a) making representations about the effect of the direction and of any of its conditions; and
- (b) proposing steps for remedying the situation.

(3A) In relation to a direction under section 100 in an urgent case, as soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine--

- (a) whether the contravention providing the grounds for the giving of the direction did occur; and
- (b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM—

- (a) require additional time to consider representations received; or
- (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).

(4) A case is an urgent case for the purposes of this section if OFCOM--

- (a) consider that it would be inappropriate, because the contraventions in question fall within subsection (5), to allow time, before giving a direction under section 100 or 101, for the making and consideration of representations; and
- (b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).

(5) The contraventions fall within this subsection if they have resulted in, or create an immediate risk of--

- (a) a serious threat to the safety of the public, to public health or to national security;
- (b) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available; or
- (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(6) In this section--

"contravening provider" has ~~the same meaning as in section 100~~ means a person who is a communications provider or make associated facilities available; and

"contravening supplier" has the same meaning as in section 101.

103 Enforcement of directions under ss 98, 100, 100A and 101

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility--

- (a) while his entitlement to do so is suspended by a direction under section ~~98(4) or 100~~ 98(4), 100 or 100A; or
- (b) in contravention of a restriction contained in such a direction.

(2) A person is guilty of an offence if he supplies electronic communications apparatus--

- (a) while prohibited from doing so by a direction under section 101; or
- (b) in contravention of a restriction contained in such a direction.

(3) A person guilty of an offence under this section shall be liable--

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

~~(4) Sections 94 to 99 apply in relation to a contravention of conditions imposed by a direction under section 98, 100 or 101 as they apply in relation to a contravention of conditions set under section 45. Sections 96A to 99 apply in relation to a contravention of conditions imposed by a direction under section 98, 100 or 100A as they apply in relation to a contravention of conditions set under section 45, other than SMP apparatus conditions.~~

~~(5) Sections 94 to 96 and 97 to 99 apply in relation to a contravention of conditions imposed by a direction under section 101 as they apply in relation to a contravention of SMP apparatus conditions.~~

104 Civil liability for breach of conditions or ~~enforcement notification~~confirmation decision

(1) The obligation of a person to comply with--

- (a) the conditions set under section 45 which apply to him,
- (b) requirements imposed on him by an enforcement notification under section 95, ~~and~~
(ba) requirements imposed on the person by a notification under section 96A and a confirmation decision under section 96C; and
- (c) the conditions imposed by a direction under section 98 or 100 or 100A,

shall be a duty owed to every person who may be affected by a contravention of the condition or requirement.

(2) Where a duty is owed by virtue of this section to a person--

- (a) a breach of the duty that causes that person to sustain loss or damage, and
- (b) an act which--
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(3) In proceedings brought against a person by virtue of subsection (2)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition or requirement in question.

(4) The consent of OFCOM is required for the bringing of proceedings by virtue of subsection (1)(a).

(5) Where OFCOM give a consent for the purposes of subsection (4) subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on by that person except in compliance with those conditions.

~~OFCOM's duty to intervene on network access issues~~

~~105 Consideration and determination of network access questions~~

~~(1) This section applies where--~~

~~(a) it appears to OFCOM that a network access question has arisen and needs to be determined; and~~

~~(b) they consider that, for the purpose of determining that question, it would be appropriate for them to exercise their powers under this Chapter to set, modify or revoke conditions falling within subsection (2).~~

~~(2) Conditions falling within this subsection are—~~

~~(a) access-related conditions authorised by section 73(2) or (4); and~~

~~(b) SMP services conditions authorised by section 87.~~

~~(3) Before considering whether, for the purpose of determining the question that has arisen, to set, modify or revoke conditions falling within subsection (2), OFCOM must publish a notification of their proposal to consider that matter.~~

~~(4) If, after considering that matter, OFCOM decide not to exercise their powers to set, modify or revoke conditions falling within subsection (2), they must publish a notification of their decision.~~

~~(5) A notification under this section must be published in the manner that OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, would be likely to be affected by action taken for determining the network access question that appears to them to have arisen.~~

~~(6) In this section "network access question" means a question relating to network access or the terms or conditions on which it is or may be provided in a particular case.~~

Security of public electronic communications networks and services

Requirement to protect security of networks and services

105A.—(1) Network providers and service providers must take technical and organisational measures appropriately to manage risks to the security of public electronic communications networks and public electronic communications services.

(2) Measures under subsection (1) must, in particular, include measures to prevent or minimise the impact of security incidents on end-users.

(3) Measures under subsection (1) taken by a network provider must also include measures to prevent or minimise the impact of security incidents on interconnection of public electronic communications networks.

(4) A network provider must also take all appropriate steps to protect, so far as possible, the availability of the provider's public electronic communications network.

(5) In this section and sections 105B and 105C—

"network provider" means a provider of a public electronic communications network, and

"service provider" means a provider of a public electronic communications service.

Requirement to notify OFCOM of security breach

105B.—(1) A network provider must notify OFCOM—

(a) of a breach of security which has a significant impact on the operation of a public electronic communications network, and

(b) of a reduction in the availability of a public electronic communications network which has a significant impact on the network.

(2) A service provider must notify OFCOM of a breach of security which has a significant impact on the operation of a public electronic communications service.

(3) If OFCOM receive a notification under this section, they must, where they think it appropriate, notify—

(a) the regulatory authorities in other member States, and

(b) the European Network and Information Security Agency ("ENISA").

(4) OFCOM may also inform the public of a notification under this section, or require the network provider or service provider to inform the public, if OFCOM think that it is in the public interest to do so.

(5) OFCOM must prepare an annual report summarising all notifications received by them under this section during the year, and any action taken in response to a notification.

(6) A copy of the annual report must be sent to the European Commission and to ENISA.

Requirement to submit to audit

105C.—(1) OFCOM may carry out, or arrange for another person to carry out, an audit of the measures taken by a network provider or a service provider under section 105A.

(2) A network provider or a service provider must -

(a) co-operate with an audit under subsection (1), and

(b) pay the costs of the audit.

Enforcement of obligations under sections 105A to 105C

105D.—(1) Sections 96A to 96C, 98 to 100, 102 and 103 apply in relation to a contravention of a requirement under sections 105A to 105C as they apply in relation to a contravention of a condition set under section 45, other than an SMP apparatus condition.

(2) The obligation of a person to comply with the requirements of section 105A to 105C is a duty owed to every person who may be affected by a contravention of a requirement, and -

(a) section 104 applies in relation to that duty as it applies in relation to the duty set out in subsection (1) of that section, and

(b) section 104(4) applies in relation to proceedings brought by virtue of this section as it applies in relation to proceedings by virtue of section 104(1)(a).

(2) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, is to be such amount not exceeding £2 million as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

Electronic communications code

106 Application of the electronic communications code

(1) In this Chapter "the electronic communications code" means the code set out in Schedule 2 to the Telecommunications Act 1984 (c 12).

(2) Schedule 3 (which amends Schedule 2 to the Telecommunications Act 1984 (c 12) for the purpose of translating the telecommunications code into a code applicable in the context of the new regulatory regime established by this Act) shall have effect.

(3) The electronic communications code shall have effect--

(a) in the case of a person to whom it is applied by a direction given by OFCOM; and

(b) in the case of the Secretary of State or any Northern Ireland department where the Secretary of State or that department is providing or proposing to provide an electronic communications network.

(4) The only purposes for which the electronic communications code may be applied in a person's case by a direction under this section are--

- (a) the purposes of the provision by him of an electronic communications network; or
- (b) the purposes of the provision by him of a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.

(5) A direction applying the electronic communications code in any person's case may provide for that code to have effect in his case--

- (a) in relation only to such places or localities as may be specified or described in the direction;
- (b) for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or
- (c) for the purposes only of the provision of such conduit system, or part of a conduit system, as may be so specified or described.

(6) The Secretary of State may by order provide for the electronic communications code to have effect for all purposes with a different amount substituted for the amount for the time being specified in paragraph 16(3) of the code (minimum compensation).

(7) In this section "conduit" includes a tunnel, subway, tube or pipe.

107 Procedure for directions applying code

(1) OFCOM are not to give a direction applying the electronic communications code in any person's case except on an application made for the purpose by that person.

(1A) Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 makes provision about the time within which an application under subsection (1) must be determined.

(2) If OFCOM publish a notification setting out their requirements with respect to--

- (a) the content of an application for a direction applying the electronic communications code, and
- (b) the manner in which such an application is to be made,

such an application must be made in accordance with the requirements for the time being in force.

(3) OFCOM may--

- (a) from time to time review the requirements for the time being in force for the purposes of subsection (2); and
- (b) on any such review, modify them in such manner as they think fit by giving a notification of the revised requirements.

(3A) A modification may not be made under subsection (3) unless the modification is--

- (a) objectively justifiable, and
- (b) proportionate to what it is intended to achieve.

(3B) Before making a modification under subsection (3), OFCOM must publish a notification of the proposed modification which contains the following—

- (a) a statement of the proposal,
- (b) a statement of their reasons for the proposal, and
- (c) a statement of the period within which representations may be made to them about the proposal.

(3C) The period specified under subsection (3B)(c) must end no less than one month after the day of the publication of the notification.

(4) In considering whether to apply the electronic communications code in any person's case, OFCOM must have regard, in particular, to each of the following matters--

- (a) the benefit to the public of the electronic communications network or conduit system by reference to which the code is to be applied to that person;
- (b) the practicability of the provision of that network or system without the application of the code;
- (c) the need to encourage the sharing of the use of electronic communications apparatus;
- (d) whether the person in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of--
 - (i) the application of the code in his case; and
 - (ii) any conduct of his in relation to the matters with which the code deals.

(5) For the purposes of subsections (6) and (7) of section 3 OFCOM's duty under subsection (4) ranks equally with their duties under that section.

(6) Before giving a direction under section 106, OFCOM must--

- (a) publish a notification of their proposal to give the direction; and
- (b) consider any representations about that proposal that are made to them within the period specified in the notification.

(7) A notification for the purposes of subsection (6)(a) must contain the following--

- (a) a statement of OFCOM's proposal;
- (b) a statement of their reasons for that proposal;
- (c) a statement of the period within which representations may be made to them about the proposal.

(8) The statement of OFCOM's proposal must--

- (a) contain a statement that they propose to apply the code in the case of the person in question;
- (b) set out any proposals of theirs to impose terms under section 106(5);

but this subsection is subject to sections 113(7) and 115(5).

(9) The period specified as the period within which representations may be made must end no less than one month after the day of the publication of the notification.

(10) The publication by OFCOM of a notification for any of the purposes of this section must be a publication in such manner as OFCOM consider appropriate for bringing the notification to the attention of the persons who, in their opinion, are likely to be affected by it.

108 Register of persons in whose case code applies

- (1) It shall be the duty of OFCOM to establish and maintain a register of persons in whose case the electronic communications code applies by virtue of a direction under section 106.
- (2) OFCOM must record in the register every direction given under that section.
- (3) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.
- (4) It shall be the duty of OFCOM to publish a notification setting out--
 - (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (5) The publication of a notification under subsection (4) must be a publication 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 it.
- (6) OFCOM must make the register available for public inspection--
 - (a) during such hours, and
 - (b) on payment of such fees,

as are set out in the notification for the time being in force under subsection (4).

109 Restrictions and conditions subject to which code applies

- (1) Where the electronic communications code is applied in any person's case by a direction given by OFCOM, that code is to have effect in that person's case subject to such restrictions and conditions as may be contained in regulations made by the Secretary of State.
- (2) In exercising his power to make regulations under this section it shall be the duty of the Secretary of State to have regard to each of the following--
 - (a) the duties imposed on OFCOM by sections 3 and 4;
 - (b) the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside;
 - (c) the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;
 - (d) the need to encourage the sharing of the use of electronic communications apparatus;
 - (da) the need to ensure that restrictions and conditions are objectively justifiable and proportionate to what they are intended to achieve;
 - (e) the need to secure that a person in whose case the code is applied will be able to meet liabilities arising as a consequence of--
 - (i) the application of the code in his case; and
 - (ii) any conduct of his in relation to the matters with which the code deals.

(3) The power of the Secretary of State to provide by regulations for the restrictions and conditions subject to which the electronic communications code has effect includes power to provide for restrictions and conditions which are framed by reference to any one or more of the following--

- (a) the making of a determination in accordance with the regulations by a person specified in the regulations;
- (b) the giving of an approval or consent by a person so specified; or
- (c) the opinion of any person.

(4) Before making any regulations under this section, the Secretary of State must consult--

- (a) OFCOM; and
- (b) such other persons as he considers appropriate.

110 Enforcement of restrictions and conditions

(1) Where OFCOM determine that there are reasonable grounds for believing that a person in whose case the electronic communications code applies is contravening, or has contravened, a requirement imposed by virtue of any restrictions or conditions under section 109, they may give him a notification under this section.

(2) A notification under this section is one which--

- (a) sets out the determination made by OFCOM;
- (b) specifies the requirement and the contravention in respect of which that determination has been made; ~~and~~

~~(c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).~~

(c) specifies the period during which the person notified has an opportunity to make representations;

(d) specifies the steps that OFCOM think should be taken by the person in order to—

_____ (i) comply with a requirement;

_____ (ii) remedy the consequences of a contravention;

(e) specifies any penalty which OFCOM are minded to impose in accordance with section 110A; and

(f) where a contravention is serious, specifies any direction which OFCOM are minded to give under section 113(4).

~~(3) Those things are--~~

~~(a) making representations about the matters notified;~~

~~(b) complying with any notified requirement of which he remains in contravention; and~~

~~(c) remedying the consequences of notified contraventions.~~

~~(4) Subject to subsections (5) to (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.~~

~~(5) OFCOM may, if they think fit, allow a longer period for doing those things either--~~

~~(a) by specifying a longer period in the notification; or~~

~~(b) by subsequently, on one or more occasions, extending the specified period.~~

~~(6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.~~

~~(7) The person notified shall also have a shorter period if--~~

~~(a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;~~

~~(b) they have determined that, in those circumstances, a shorter period would be appropriate; and~~

~~(c) the shorter period has been specified in the notification.~~

(8) A notification under this section--

(a) may be given in respect of more than one contravention; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(9) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if--

(a) the contravention is one occurring after the time of the giving of the earlier notification;

(b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or

(c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

~~(10) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if--~~

~~(a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same requirement; and~~

~~(b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 111(2) or 112(2) that the contravention to which the previous notification related did occur.~~

Penalties for contravention of code restrictions

110A.—(1) This section applies where a person is given a notification under section 110 which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after--

(a) the giving of a confirmation decision under section 111(4)(c) which requires immediate action; or

(b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be –

(a) appropriate, and

(b) proportionate to the contravention in respect of which it is imposed.

(6) The amount of any other penalty specified in a notification under section 110 is to be such amount not exceeding £10,000 as OFCOM determine to be—

(a) appropriate, and

(b) proportionate to the contravention in respect of which it is imposed.

(7) 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 (6).

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

111 ~~Enforcement notification~~Confirmation decision for contravention of code restrictions

(1) This section applies where--

- (a) a person ("the notified provider") has been given a notification under section 110;
- (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

~~(2) OFCOM may give the notified provider an enforcement notification if they are satisfied--~~

~~(a) that he has been in contravention, in one or more of the respects notified, of a requirement specified in the notification under section 110; and~~

~~(b) that he has not, during the period allowed under section 110, taken all such steps as they consider appropriate--~~

~~(i) for complying with that requirement; and~~

~~(ii) for remedying the consequences of the notified contravention of that requirement.~~

(2) OFCOM may—

(a) give the notified provider a decision (a "confirmation decision") confirming the imposition of requirements on the notified provider, or the giving of a direction to the notified provider, or both, in accordance with the notification under section 110; or

(b) notify the notified provider that they are satisfied with the representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to the notified provider unless, after considering any representations, they are satisfied that the notified provider has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under section 110.

~~(3) An enforcement notification is a notification which imposes one or both of the following requirements on the notified provider--~~

~~(a) a requirement to take such steps for complying with the notified requirement as may be specified in the notification;~~

~~(b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.~~

~~(4) A decision of OFCOM to give an enforcement notification to a person—~~

~~(a) must be notified by them to that person, together with the reasons for the decision, no later than one week after the day on which it is taken; and~~

~~(b) must fix a reasonable period for the taking of the steps required by the notification.~~

~~(4) A confirmation decision—~~

~~(a) must be given to the person without delay;~~

~~(b) must include reasons for the decision;~~

~~(b) may require immediate action by the person to comply with requirements of a kind mentioned in section 110(2)(d), or may specify a period within which the person must comply with those requirements; and~~

~~(c) may require the person to pay—~~

~~_____ (i) the penalty specified in the notification under section 110(2)(e), or~~

~~_____ (ii) such other lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and~~

~~may specify the period within which the penalty is to be paid.~~

(5) It shall be the duty of a person to whom an ~~enforcement notification~~confirmation decision has been given to comply with ~~any requirement imposed by it.~~

(6) That duty shall be enforceable in civil proceedings by OFCOM--

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c 36); or

(c) for any other appropriate remedy or relief.

~~(7) A penalty imposed by a confirmation decision—~~

~~(a) must be paid to OFCOM; and~~

~~(b) if not paid within the period specified by them, is to be recoverable by them accordingly.~~

Power to deal with urgent cases

111A.—(1) This section applies where OFCOM determine—

(a) that they are entitled to give a notification under section 110 with respect to a contravention by a person ("P") of a requirement imposed by virtue of any restrictions or conditions under section 109;

(b) that there are reasonable grounds for suspecting that the case is an urgent case; and

(c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.

(2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons (other than P) who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(3) OFCOM may, to the extent specified in subsection (4), give a direction suspending the application in P's case of the electronic communications code if the electronic communications code has been applied to P by a direction under section 106.

(4) The extent of a suspension under subsection (3) must not go beyond the following applications of the code in that person's case—

(a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;

(b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and

(c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.

(5) A direction under subsection (3), except so far as it otherwise provides, shall continue in force until such time (if any) as it is withdrawn by OFCOM.

(6) Subject to subsection (7), where the application of the electronic communications code is suspended in a person's case, the person is not entitled to exercise any right conferred by or by virtue of the code.

(7) The suspension of the application of the electronic communications code in a person's case does not, except so far as otherwise provided by a scheme contained in an order under section 117—

(a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;

(b) affect anything done under the code before the suspension of its application; or

(c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.

Confirmation of direction under section 111A

111B.—(1) As soon as reasonably practicable after giving a direction under section 111A(3), OFCOM must give the person to whom it is given—

(a) an opportunity of making representations to them about the grounds on which it was given and its effect; and

(b) an opportunity of proposing steps to remedy the situation.

(2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3) The period of 3 months mentioned in subsection (2) may be extended by up to three months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).

(4) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(5) If not, they must exercise their power to revoke it.

(6) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.

112 Penalties for contravention of code restrictions

~~(1) This section applies (in addition to section 111) where--~~

~~(a) a person ("the notified provider") has been given a notification under section 110;~~

~~(b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and~~

~~(c) the period allowed for the making of the representations has expired.~~

~~(2) OFCOM may impose a penalty on the notified provider if he--~~

~~(a) has been in contravention, in any of the respects notified, of a requirement specified in the notification under section 110; and~~

~~(b) has not, during the period allowed under that section, taken all such steps as they consider appropriate--~~

~~(i) for complying with the notified requirement; and~~

~~(ii) for remedying the consequences of the notified contravention of that requirement.~~

~~(3) Where a notification under section 110 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.~~

~~(4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed under this section in respect of the period of contravention specified in the notification.~~

~~(5) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification.~~

~~(6) The amount of a penalty imposed under this section is to be such amount not exceeding £10,000 as OFCOM determine to be--~~

~~(a) appropriate; and~~

~~(b) proportionate to the contravention in respect of which it is imposed.~~

~~(7) 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 requirements contraventions of which have been notified to him under section 110; and~~

~~(c) any steps taken by him for remedying the consequences of those contraventions.~~

~~(8) Where OFCOM impose a penalty on a person under this section, they shall--~~

~~(a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and~~

~~(b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.~~

~~(9) A penalty imposed under this section--~~

~~(a) must be paid to OFCOM; and~~

~~(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.~~

~~(10) 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 (6).~~

~~(11) No order is to be made containing provision authorised by subsection (10) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.~~

113 Suspension of application of code

(1) OFCOM may suspend the application of the electronic communications code in any person's case if they are satisfied--

(a) that he is or has been in serious ~~and or~~ repeated contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);

(aa) that, in the case of a single serious contravention, a notification has been given to the contravening provider under section 40 and the period for making representations under that section has expired;

(b) that, in the case of a repeated contravention, the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;

(c) that, in the case of a repeated contravention, an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and

~~(d) that the suspension of the application of the code is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions; that the suspension of the application of the code is appropriate and proportionate to the contravention.~~

(2) OFCOM may, to the extent specified in subsection (3), suspend the application in that person's case of the electronic communications code if--

(a) the electronic communications code has been applied by a direction under section 106 in any person's case; and

(b) OFCOM give a direction under section 42, 100 (including that section as applied by section 105D), 132 or 140 for the suspension or restriction of that person's entitlement to provide an electronic communications network, or a part of such a network.

(3) The extent, in any person's case, of a suspension under subsection (2) must not go beyond the application of the code for the purposes of so much of an electronic communications network as that person

is prohibited from providing by virtue of the suspension or restriction of his entitlement to provide such a network, or part of a network.

(4) OFCOM may, to the extent specified in subsection (5), suspend the application in that person's case of the electronic communications code if--

- (a) the electronic communications code has been applied by a direction under section 106 in any person's case; and
- (b) that person is a person in whose case there have been repeated ~~and-or~~ serious contraventions of requirements imposed by virtue of any restrictions or conditions under section 109.

(5) The extent, in any person's case, of a suspension under subsection (4) must not go beyond the following applications of the code in his case--

- (a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
- (b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and
- (c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.

(6) A suspension under this section of the application of the code in any person's case must be by a further direction given to that person by OFCOM under section 106.

(7) The statement required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal is a statement of their proposal to suspend the application of the code.

(8) A suspension of the application of the electronic communications code in any person's case--

- (a) shall cease to have effect if the suspension is under subsection (2) and the network suspension or restriction ceases to have effect; but
- (b) subject to that shall continue in force until such time (if any) as it is withdrawn by OFCOM.

(9) In subsection (8) the reference to the network suspension or restriction, in relation to a suspension of the application of the electronic communications code, is a reference to the suspension or restriction of an entitlement to provide an electronic communications network, or part of such a network, which is the suspension or restriction by reference to which the application of the code was suspended under subsection (2).

(10) Subject to subsection (11), where the application of the electronic communications code is suspended in a person's case, he shall not, while it is so suspended, be entitled to exercise any right conferred on him by or by virtue of the code.

(11) The suspension, in a person's case, of the application of the electronic communications code does not, except so far as otherwise provided by a scheme contained in an order under section 117--

- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;
- (b) affect anything done under the code before the suspension of its application; or
- (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.

(12) Subsection (9) of section 42 applies for the purposes of subsection (1) as it applies for the purposes of that section.

(13) For the purposes of subsection (4) there are repeated contraventions by a person of conditions or restrictions under section 109 if

(a) in the case of a previous notification given to the person under section 110, OFCOM have given a confirmation decision to the person under section 111(2);

(b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of a condition or restriction under section 109; and

(c) the previous confirmation decision and the subsequent ones all relate to contraventions of the same condition or restriction (whether the same contravention or different contraventions).

114 Procedure for directions under s 113

(1) Except in an urgent case, or a case of a single serious contravention, OFCOM are not to give a direction under section 113(4) suspending the application of the electronic communications code in the case of any person ("the operator") unless they have--

(a) notified the operator of the proposed suspension and of the steps (if any) that they are proposing to take under section 117;

(b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation that has given rise to the proposed suspension; and

(c) considered every representation and proposal made to them during the period allowed by them for the operator to take advantage of that opportunity.

~~(2) That period must be one ending not less than one month after the day of the giving of the notification. That period is such reasonable period as OFCOM may specify, beginning with the day of the giving of the notification.~~

(3) As soon as practicable after giving a direction under section 113 in an urgent case, OFCOM must provide the operator with an opportunity of--

(a) making representations about the effect of the direction and of any steps taken under section 117 in connection with the suspension; and

(b) proposing steps for remedying the situation that has given rise to the situation.

(3A) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).

(3C) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(3D) If not, they must revoke it.

- (4) A case is an urgent case for the purposes of this section if OFCOM--
- (a) consider that it would be inappropriate, because the circumstances appearing to OFCOM to require the suspension fall within subsection (5), to allow time, before giving a direction under section 113, for the making and consideration of representations; and
 - (b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).
- (5) Circumstances fall within this subsection if they have resulted in, or create an immediate risk of--
- (a) a serious threat to the safety of the public, to public health or to national security;
 - (b) serious economic or operational problems for persons (apart from the operator) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

115 Modification and revocation of application of code

- (1) OFCOM may at any time modify the terms on which, by virtue of section 106(5), the code is applied in a person's case.
- (2) OFCOM may revoke a direction applying the electronic communications code in a person's case if an application for the revocation has been made by that person.
- (3) If at any time it appears to OFCOM that a person in whose case the electronic communications code has been applied is not the provider of an electronic communications network or conduit system for the purposes of which the code applies, OFCOM may revoke the direction applying the code in his case.
- (4) A modification or revocation under this section shall be by a further direction under section 106 to the person in whose case the electronic communications code has been applied by the direction being modified or revoked.

(4A) A modification under this section may not be made unless the modification is--

- (a) objectively justifiable, and
 - (b) proportionate to what it is intended to achieve.
- (5) The matters required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal are whichever of the following is applicable--
- (a) a statement of their proposal to modify terms imposed under section 106(5);
 - (b) a statement of their proposal to revoke the direction applying the code.

116 Notification of cessation by person to whom code applies

- (1) This section applies where, by virtue of a direction under section 106, the electronic communications code applies in any person's case for the purposes of the provision by him of--
- (a) an electronic communications network which is not of a description designated for the purposes of section 33; or

- (b) such a system of conduits as is mentioned in section 106(4)(b).
- (2) If that person ceases to provide that network or conduit system, he must notify OFCOM of that fact.
- (3) A notification under this section must be given within such period and in such manner as may be required by OFCOM.
- (4) OFCOM may impose a penalty on a person who fails to comply with a requirement imposed by or under this section.
- (5) The amount of a penalty imposed on a person under this section is to be such amount not exceeding £1,000 as OFCOM may determine to be both--
 - (a) appropriate; and
 - (b) proportionate to the matter in respect of which it is imposed.
- (6) Where OFCOM impose a penalty on a person under this section, they shall--
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section--
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (8) 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 (5).
- (9) No order is to be made containing provision authorised by subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

117 Transitional schemes on cessation of application of code

- (1) Where it appears to OFCOM--
 - (a) that the electronic communications code has ceased or is to cease to apply, to any extent, in the case of any person ("the former operator"),
 - (b) that it has ceased or will cease so to apply for either of the reasons specified in subsection (2), and
 - (c) that it is appropriate for transitional provision to be made in connection with it ceasing to apply in the case of the former operator,

they may by order make a scheme containing any such transitional provision as they think fit in that case.

- (2) Those reasons are--
 - (a) the suspension under section 113 of the application of the code in the former operator's case;
 - (b) the revocation or modification under section 115 of the direction applying the code in his case.

- (3) A scheme contained in an order under this section may, in particular--
- (a) impose any one or more obligations falling within subsection (4) on the former operator;
 - (b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;
 - (c) authorise the retention of apparatus on any land pending its subsequent use for the purposes of an electronic communications network, electronic communications service or conduit system to be provided by any person;
 - (d) provide for the transfer to such persons as may be specified in, or determined in accordance with, the scheme of any rights or liabilities arising out of any agreement or other obligation entered into or incurred in pursuance of the code by the former operator;
 - (e) provide, for the purposes of any provision contained in the scheme by virtue of any of the preceding paragraphs, for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, OFCOM.
- (4) The obligations referred to in subsection (3)(a) are--
- (a) an obligation to remove anything installed in pursuance of any right conferred by or in accordance with the code;
 - (b) an obligation to restore land to its condition before anything was done in pursuance of any such right; or
 - (c) an obligation to pay the expenses of any such removal or restoration.
- (5) Sections 110 to 112 apply in relation to the requirements imposed by virtue of a scheme contained in an order under this section as they apply in relation to a requirement imposed by virtue of restrictions or conditions under section 109.
- (6) Section 403 applies to the power of OFCOM to make an order under this section.

118 Compulsory acquisition of land etc

Schedule 4 (which provides for compulsory acquisition of land by the provider of an electronic communications network in whose case the electronic communications code applies and for entry on land by persons nominated by such a provider) shall have effect.

119 Power to give assistance in relation to certain proceedings

- (1) This section applies where any actual or prospective party to any proceedings falling within subsection (2) (other than the operator, within the meaning of the electronic communications code) applies to OFCOM for assistance under this section in relation to those proceedings.
- (2) The proceedings falling within this subsection are any actual or prospective proceedings in which there falls to be determined any question arising under, or in connection with--
- (a) the electronic communications code as applied in any person's case by a direction under section 106; or
 - (b) any restriction or condition subject to which that code applies.

(3) OFCOM may grant the application if, on any one or more of the following grounds, they think fit to do so--

- (a) on the ground that the case raises a question of principle;
- (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without assistance under this section;
- (c) by reason of any other special consideration.

(4) Assistance by OFCOM under this section may include--

- (a) giving advice or arranging for the giving of advice by a solicitor or counsel;
- (b) procuring or attempting to procure the settlement of the matter in dispute;
- (c) arranging for the giving of any assistance usually given by a solicitor or counsel--
 - (i) in the steps preliminary or incidental to proceedings; or
 - (ii) in arriving at, or giving effect to, a compromise to avoid proceedings or to bring them to an end;
- (d) arranging for representation by a solicitor or counsel;
- (e) arranging for the giving of any other assistance by a solicitor or counsel;
- (f) any other form of assistance which OFCOM consider appropriate.

(5) Nothing in subsection (4)(d) shall be taken to affect the law and practice regulating the descriptions of persons who may appear in, conduct or defend any proceedings, or who may address the court in any proceedings.

(6) In so far as expenses are incurred by OFCOM in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of OFCOM--

- (a) on any costs or expenses which (whether by virtue of a judgement or order of a court, or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
- (b) so far as relates to costs or expenses, on the applicant's rights under a compromise or settlement arrived at in connection with that matter to avoid proceedings, or to bring them to an end.

(7) A charge conferred by subsection (6) is subject to--

- (a) any charge imposed by section 10(7) of the Access to Justice Act 1999 (c 22) and any provision made by or under Part 1 of that Act for the payment of any sum to the Legal Services Commission;
- (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 (c 47); or
- (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (SI 1981/228 (NI 8)).

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.
- (5) Section ~~47 appliess 47 and 48 apply~~ to the setting, modification and revocation of a condition under this section as ~~they applyit applies~~ 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

(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.

Procedure for setting, modifying and revoking premium rate services conditions

120A.—(1) The way in which conditions are to be set or modified under section 120 is by the publication of a notification setting out the conditions or modifications.

(2) The way in which such a condition is to be revoked is by the publication of a notification stating that the condition is revoked.

(3) Before setting such conditions, or modifying or revoking a condition so set, OFCOM must publish a notification—

(a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;

(b) setting out the effect of those conditions, modifications or revocations;

(c) giving their reasons for making the proposal; and

(d) specifying the period within which representations may be made to OFCOM about their proposal.

(3) That period must end no less than one month after the day of the publication of the notification.

(4) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.

(5) OFCOM may give effect to the proposal, with any modifications that appear to OFCOM to be appropriate, after—

(a) considering every representation about the proposal made to them during the period specified in the notification; and

(b) having regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by its contents.

(7) OFCOM must send a copy of every notification published under this section to the Secretary of State.

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;
 - (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.

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
 - (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 £250,000 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--
- (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
 - (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.

Online infringement of copyright: obligations of internet service providers

124A Obligation to notify subscribers of copyright infringement reports

- (1) This section applies if it appears to a copyright owner that--
- (a) a subscriber to an internet access service has infringed the owner's copyright by means of the service; or
 - (b) a subscriber to an internet access service has allowed another person to use the service, and that other person has infringed the owner's copyright by means of the service.
- (2) The owner may make a copyright infringement report to the internet service provider who provided the internet access service if a code in force under section 124C or 124D (an "initial obligations code") allows the owner to do so.
- (3) A "copyright infringement report" is a report that--
- (a) states that there appears to have been an infringement of the owner's copyright;
 - (b) includes a description of the apparent infringement;
 - (c) includes evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;
 - (d) is sent to the internet service provider within the period of 1 month beginning with the day on which the evidence was gathered; and
 - (e) complies with any other requirement of the initial obligations code.
- (4) An internet service provider who receives a copyright infringement report must notify the subscriber of the report if the initial obligations code requires the provider to do so.
- (5) A notification under subsection (4) must be sent to the subscriber within the period of 1 month beginning with the day on which the provider receives the report.
- (6) A notification under subsection (4) must include--

- (a) a statement that the notification is sent under this section in response to a copyright infringement report;
- (b) the name of the copyright owner who made the report;
- (c) a description of the apparent infringement;
- (d) evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;
- (e) information about subscriber appeals and the grounds on which they may be made;
- (f) information about copyright and its purpose;
- (g) advice, or information enabling the subscriber to obtain advice, about how to obtain lawful access to copyright works;
- (h) advice, or information enabling the subscriber to obtain advice, about steps that a subscriber can take to protect an internet access service from unauthorised use; and
- (i) anything else that the initial obligations code requires the notification to include.

(7) For the purposes of subsection (6)(h) the internet service provider must take into account the suitability of different protection for subscribers in different circumstances.

(8) The things that may be required under subsection (6)(i), whether in general or in a particular case, include in particular--

- (a) a statement that information about the apparent infringement may be kept by the internet service provider;
- (b) a statement that the copyright owner may require the provider to disclose which copyright infringement reports made by the owner to the provider relate to the subscriber;
- (c) a statement that, following such a disclosure, the copyright owner may apply to a court to learn the subscriber's identity and may bring proceedings against the subscriber for copyright infringement; and
- (d) where the requirement for the provider to send the notification arises partly because of a report that has already been the subject of a notification under subsection (4), a statement that the number of copyright infringement reports relating to the subscriber may be taken into account for the purposes of any technical measures.

(9) In this section "notify", in relation to a subscriber, means send a notification to the electronic or postal address held by the internet service provider for the subscriber (and sections 394 to 396 do not apply).

124B Obligation to provide copyright infringement lists to copyright owners

(1) An internet service provider must provide a copyright owner with a copyright infringement list for a period if--

- (a) the owner requests the list for that period; and
- (b) an initial obligations code requires the internet service provider to provide it.

(2) A "copyright infringement list" is a list that--

- (a) sets out, in relation to each relevant subscriber, which of the copyright infringement reports made by the owner to the provider relate to the subscriber, but
- (b) does not enable any subscriber to be identified.

(3) A subscriber is a "relevant subscriber" in relation to a copyright owner and an internet service provider if copyright infringement reports made by the owner to the provider in relation to the subscriber have reached the threshold set in the initial obligations code.

124C Approval of code about the initial obligations

- (1) The obligations of internet service providers under sections 124A and 124B are the "initial obligations".
- (2) If it appears to OFCOM--
 - (a) that a code has been made by any person for the purpose of regulating the initial obligations; and
 - (b) that it would be appropriate for them to approve the code for that purpose,

they may by order approve it, with effect from the date given in the order.

- (3) The provision that may be contained in a code and approved under this section includes provision that--
 - (a) specifies conditions that must be met for rights and obligations under the copyright infringement provisions or the code to apply in a particular case;
 - (b) requires copyright owners or internet service providers to provide any information or assistance that is reasonably required to determine whether a condition under paragraph (a) is met.
- (4) The provision mentioned in subsection (3)(a) may, in particular, specify that a right or obligation does not apply in relation to a copyright owner unless the owner has made arrangements with an internet service provider regarding--
 - (a) the number of copyright infringement reports that the owner may make to the provider within a particular period; and
 - (b) payment in advance of a contribution towards meeting costs incurred by the provider.

- (5) The provision mentioned in subsection (3)(a) may also, in particular, provide that--
 - (a) except as provided by the code, rights and obligations do not apply in relation to an internet service provider unless the number of copyright infringement reports the provider receives within a particular period reaches a threshold set in the code; and
 - (b) if the threshold is reached, rights or obligations apply with effect from the date when it is reached or from a later time.
- (6) OFCOM must not approve a code under this section unless satisfied that it meets the criteria set out in section 124E.
- (7) Not more than one approved code may have effect at a time.
- (8) OFCOM must keep an approved code under review.
- (9) OFCOM may by order, at any time, for the purpose mentioned in subsection (2)--

- (a) approve modifications that have been made to an approved code; or
- (b) withdraw their approval from an approved code,

with effect from the date given in the order, and must do so if the code ceases to meet the criteria set out in section 124E.

(10) The consent of the Secretary of State is required for the approval of a code or the modification of an approved code.

(11) An order made by OFCOM under this section approving a code or modification must set out the code or modification.

(12) Section 403 applies to the power of OFCOM to make an order under this section.

(13) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

124D Initial obligations code by OFCOM in the absence of an approved code

(1) For any period when sections 124A and 124B are in force but for which there is no approved initial obligations code under section 124C, OFCOM must by order make a code for the purpose of regulating the initial obligations.

(2) OFCOM may but need not make a code under subsection (1) for a time before the end of--

- (a) the period of six months beginning with the day on which sections 124A and 124B come into force, or
- (b) such longer period as the Secretary of State may specify by notice to OFCOM.

(3) The Secretary of State may give a notice under subsection (2)(b) only if it appears to the Secretary of State that it is not practicable for OFCOM to make a code with effect from the end of the period mentioned in subsection (2)(a) or any longer period for the time being specified under subsection (2)(b).

(4) A code under this section may do any of the things mentioned in section 124C(3) to (5).

(5) A code under this section may also--

- (a) confer jurisdiction with respect to any matter (other than jurisdiction to determine appeals by subscribers) on OFCOM themselves;
- (b) provide for OFCOM, in exercising such jurisdiction, to make awards of compensation, to direct the reimbursement of costs, or to do both;
- (c) provide for OFCOM to enforce, or to participate in the enforcement of, any awards or directions made under the code;
- (d) make other provision for the enforcement of such awards and directions;
- (e) establish a body corporate, with the capacity to make its own rules and establish its own procedures, for the purpose of determining subscriber appeals;
- (f) provide for a person with the function of determining subscriber appeals to enforce, or to participate in the enforcement of, any awards or directions made by the person;
- (g) make other provision for the enforcement of such awards and directions; and
- (h) make other provision for the purpose of regulating the initial obligations.

- (6) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124E.
- (7) OFCOM must--
- (a) keep a code under this section under review; and
 - (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124E.
- (8) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.
- (9) Section 403 applies to the power of OFCOM to make an order under this section.
- (10) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

124E Contents of initial obligations code

- (1) The criteria referred to in sections 124C(6) and 124D(6) are--
- (a) that the code makes the required provision about copyright infringement reports (see subsection (2));
 - (b) that it makes the required provision about the notification of subscribers (see subsections (3) and (4));
 - (c) that it sets the threshold applying for the purposes of determining who is a relevant subscriber within the meaning of section 124B(3) (see subsections (5) and (6));
 - (d) that it makes provision about how internet service providers are to keep information about subscribers;
 - (e) that it limits the time for which they may keep that information;
 - (f) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
 - (g) that the requirements concerning administration and enforcement are met in relation to the code (see subsections (7) and (8));
 - (h) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
 - (i) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;
 - (j) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (k) that those provisions are proportionate to what they are intended to achieve; and
 - (l) that, in relation to what those provisions are intended to achieve, they are transparent.
- (2) The required provision about copyright infringement reports is provision that specifies--
- (a) requirements as to the means of obtaining evidence of infringement of copyright for inclusion in a report;
 - (b) the standard of evidence that must be included; and

- (c) the required form of the report.
- (3) The required provision about the notification of subscribers is provision that specifies, in relation to a subscriber in relation to whom an internet service provider receives one or more copyright infringement reports--
- (a) requirements as to the means by which the provider identifies the subscriber;
 - (b) which of the reports the provider must notify the subscriber of; and
 - (c) requirements as to the form, contents and means of the notification in each case.
- (4) The provision mentioned in subsection (3) must not permit any copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber to be taken into account for the purposes of the notification.
- (5) The threshold applying in accordance with subsection (1)(c) may, subject to subsection (6), be set by reference to any matter, including in particular one or more of--
- (a) the number of copyright infringement reports;
 - (b) the time within which the reports are made; and
 - (c) the time of the apparent infringements to which they relate.
- (6) The threshold applying in accordance with subsection (1)(c) must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report.
- (7) The requirements concerning administration and enforcement are--
- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;
 - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and
 - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (8) The provision mentioned in subsection (7) may include, in particular--
- (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 124L(2);
 - (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's failure to comply with the code or the copyright infringement provisions.
- (9) In this section "owner-provider dispute" means a dispute that--
- (a) is between persons who are copyright owners or internet service providers; and
 - (b) relates to an act or omission in relation to an initial obligation or an initial obligations code.

124F Progress reports

- (1) OFCOM must prepare the following reports for the Secretary of State about the infringement of copyright by subscribers to internet access services.
- (2) OFCOM must prepare a full report for--
 - (a) the period of 12 months beginning with the first day on which there is an initial obligations code in force; and
 - (b) each successive period of 12 months.
- (3) OFCOM must prepare an interim report for--
 - (a) the period of 3 months beginning with the first day on which there is an initial obligations code in force; and
 - (b) each successive period of 3 months, other than one ending at the same time as a period of 12 months under subsection (2).

But this is subject to any direction by the Secretary of State under subsection (4).

- (4) The Secretary of State may direct that subsection (3) no longer applies, with effect from the date given in the direction.
- (5) A full report under this section must include--
 - (a) an assessment of the current level of subscribers' use of internet access services to infringe copyright;
 - (b) a description of the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works;
 - (c) a description of the steps taken by copyright owners to inform, and change the attitude of, members of the public in relation to the infringement of copyright;
 - (d) an assessment of the extent of the steps mentioned in paragraphs (b) and (c);
 - (e) an assessment of the extent to which copyright owners have made copyright infringement reports;
 - (f) an assessment of the extent to which they have brought legal proceedings against subscribers in relation to whom such reports have been made;
 - (g) an assessment of the extent to which any such proceedings have been against subscribers in relation to whom a substantial number of reports have been made; and
 - (h) anything else that the Secretary of State directs OFCOM to include in the report.
- (6) An interim report under this section must include--
 - (a) the assessments mentioned in subsection (5)(a), (e) and (f); and
 - (b) anything else that the Secretary of State directs OFCOM to include in the report.
- (7) OFCOM must send a report prepared under this section to the Secretary of State as soon as practicable after the end of the period for which it is prepared.
- (8) OFCOM must publish every full report under this section--
 - (a) as soon as practicable after they send it to the Secretary of State, and

(b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

124G Obligations to limit internet access: assessment and preparation

(1) The Secretary of State may direct OFCOM to--

- (a) assess whether one or more technical obligations should be imposed on internet service providers;
- (b) take steps to prepare for the obligations;
- (c) provide a report on the assessment or steps to the Secretary of State.

(2) A "technical obligation", in relation to an internet service provider, is an obligation for the provider to take a technical measure against some or all relevant subscribers to its service for the purpose of preventing or reducing infringement of copyright by means of the internet.

(3) A "technical measure" is a measure that--

- (a) limits the speed or other capacity of the service provided to a subscriber;
- (b) prevents a subscriber from using the service to gain access to particular material, or limits such use;
- (c) suspends the service provided to a subscriber; or
- (d) limits the service provided to a subscriber in another way.

(4) A subscriber to an internet access service is "relevant" if the subscriber is a relevant subscriber, within the meaning of section 124B(3), in relation to the provider of the service and one or more copyright owners.

(5) The assessment and steps that the Secretary of State may direct OFCOM to carry out or take under subsection (1) include, in particular--

- (a) consultation of copyright owners, internet service providers, subscribers or any other person;
- (b) an assessment of the likely efficacy of a technical measure in relation to a particular type of internet access service; and
- (c) steps to prepare a proposed technical obligations code.

(6) Internet service providers and copyright owners must give OFCOM any assistance that OFCOM reasonably require for the purposes of complying with any direction under this section.

(7) The Secretary of State must lay before Parliament any direction under this section.

(8) OFCOM must publish every report under this section--

- (a) as soon as practicable after they send it to the Secretary of State, and
- (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

124H Obligations to limit internet access

- (1) The Secretary of State may by order impose a technical obligation on internet service providers if--
- (a) OFCOM have assessed whether one or more technical obligations should be imposed on internet service providers; and
 - (b) taking into account that assessment, reports prepared by OFCOM under section 124F, and any other matter that appears to the Secretary of State to be relevant, the Secretary of State considers it appropriate to make the order.
- (2) No order may be made under this section within the period of 12 months beginning with the first day on which there is an initial obligations code in force.
- (3) An order under this section must specify the date from which the technical obligation is to have effect, or provide for it to be specified.
- (4) The order may also specify--
- (a) the criteria for taking the technical measure concerned against a subscriber;
 - (b) the steps to be taken as part of the measure and when they are to be taken.
- (5) No order is to be made under this section unless--
- (a) the Secretary of State has complied with subsections (6) to (10), and
 - (b) a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) If the Secretary of State proposes to make an order under this section, the Secretary of State must lay before Parliament a document that--
- (a) explains the proposal, and
 - (b) sets it out in the form of a draft order.
- (7) During the period of 60 days beginning with the day on which the document was laid under subsection (6) ("the 60-day period"), the Secretary of State may not lay before Parliament a draft order to give effect to the proposal (with or without modifications).
- (8) In preparing a draft order under this section to give effect to the proposal, the Secretary of State must have regard to any of the following that are made with regard to the draft order during the 60-day period--
- (a) any representations, and
 - (b) any recommendations of a committee of either House of Parliament charged with reporting on the draft order.
- (9) When laying before Parliament a draft order to give effect to the proposal (with or without modifications), the Secretary of State must also lay a document that explains any changes made to the proposal contained in the document laid before Parliament under subsection (6).

(10) In calculating the 60-day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

124I Code by OFCOM about obligations to limit internet access

(1) For any period during which there are one or more technical obligations in force under section 124H, OFCOM must by order make a technical obligations code for the purpose of regulating those obligations.

(2) The code may be made separately from, or in combination with, any initial obligations code under section 124D.

(3) A code under this section may--

- (a) do any of the things mentioned in section 124C(3) to (5) or section 124D(5)(a) to (g); and
- (b) make other provision for the purpose of regulating the technical obligations.

(4) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124J.

(5) OFCOM must--

- (a) keep a code under this section under review; and
- (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124J.

(6) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code 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 is subject to annulment in pursuance of a resolution of either House of Parliament.

124J Contents of code about obligations to limit internet access

(1) The criteria referred to in section 124I(4) are--

- (a) that the requirements concerning enforcement and related matters are met in relation to the code (see subsections (2) and (3));
- (b) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
- (c) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
- (d) that it makes any other provision that the Secretary of State requires it to make;
- (e) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;
- (f) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
- (g) that those provisions are proportionate to what they are intended to achieve; and
- (h) that, in relation to what those provisions are intended to achieve, they are transparent.

- (2) The requirements concerning enforcement and related matters are--
- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;
 - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and
 - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (3) The provision made concerning enforcement and related matters may also (unless the Secretary of State requires otherwise) include, in particular--
- (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 124L(2);
 - (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's infringement or error in relation to the code or the copyright infringement provisions.
- (4) In this section "owner-provider dispute" means a dispute that--
- (a) is between persons who are copyright owners or internet service providers; and
 - (b) relates to an act or omission in relation to a technical obligation or a technical obligations code.

124K Subscriber appeals

- (1) The requirements concerning subscriber appeals are--
- (a) for the purposes of section 124E(1)(h), the requirements of subsections (2) to (8); and
 - (b) for the purposes of section 124J(1)(b), the requirements of subsections (2) to (11).
- (2) The requirements of this subsection are--
- (a) that the code confers on subscribers the right to bring a subscriber appeal and, in the case of a technical obligations code, a further right of appeal to the First-tier Tribunal;
 - (b) that there is a person who, under the code, has the function of determining subscriber appeals;
 - (c) that that person is for practical purposes independent (so far as determining subscriber appeals is concerned) of internet service providers, copyright owners and OFCOM; and
 - (d) that there are adequate arrangements under the code for the costs incurred by that person in determining subscriber appeals to be met by internet service providers, copyright owners and the subscriber concerned.
- (3) The code must provide for the grounds of appeal (so far as an appeal relates to, or to anything done by reference to, a copyright infringement report) to include the following--
- (a) that the apparent infringement to which the report relates was not an infringement of copyright;
 - (b) that the report does not relate to the subscriber's IP address at the time of the apparent infringement.

- (4) The code must provide for the grounds of appeal to include contravention by the copyright owner or internet service provider of the code or of an obligation regulated by the code.
- (5) The code must provide that an appeal on any grounds must be determined in favour of the subscriber unless the copyright owner or internet service provider shows that, as respects any copyright infringement report to which the appeal relates or by reference to which anything to which the appeal relates was done (or, if there is more than one such report, as respects each of them)--
- (a) the apparent infringement was an infringement of copyright, and
 - (b) the report relates to the subscriber's IP address at the time of that infringement.
- (6) The code must provide that, where a ground mentioned in subsection (3) is relied on, the appeal must be determined in favour of the subscriber if the subscriber shows that--
- (a) the act constituting the apparent infringement to which the report relates was not done by the subscriber, and
 - (b) the subscriber took reasonable steps to prevent other persons infringing copyright by means of the internet access service.
- (7) The powers of the person determining subscriber appeals must include power--
- (a) to secure so far as practicable that a subscriber is not prejudiced for the purposes of the copyright infringement provisions by an act or omission in respect of which an appeal is determined in favour of the subscriber;
 - (b) to make an award of compensation to be paid by a copyright owner or internet service provider to a subscriber affected by such an act or omission; and
 - (c) where the appeal is determined in favour of the subscriber, to direct the copyright owner or internet service provider to reimburse the reasonable costs of the subscriber.
- (8) The code must provide that the power to direct the reimbursement of costs under subsection (7)(c) is to be exercised to award reasonable costs to a subscriber whose appeal is successful, unless the person deciding the appeal is satisfied that it would be unjust to give such a direction having regard to all the circumstances including the conduct of the parties before and during the proceedings.
- (9) In the case of a technical obligations code, the powers of the person determining subscriber appeals must include power--
- (a) on an appeal in relation to a technical measure or proposed technical measure--
 - (i) to confirm the measure;
 - (ii) to require the measure not to be taken or to be withdrawn;
 - (iii) to substitute any other technical measure that the internet service provider has power to take;
 - (b) to exercise the power mentioned in paragraph (a)(ii) or (iii) where an appeal is not upheld but the person determining it is satisfied that there are exceptional circumstances that justify the exercise of the power;
 - (c) to take any steps that OFCOM could take in relation to the act or omission giving rise to the technical measure; and
 - (d) to remit the decision whether to confirm the technical measure, or any matter relating to that decision, to OFCOM.

- (10) In the case of a technical obligations code, the code must make provision--
- (a) enabling a determination of a subscriber appeal to be appealed to the First-tier Tribunal, including on grounds that it was based on an error of fact, wrong in law or unreasonable;
 - (b) giving the First-tier Tribunal, in relation to an appeal to it, the powers mentioned in subsections (7) and (9); and
 - (c) in relation to recovery of costs awarded by the Tribunal.
- (11) In the case of a technical obligations code, the code must include provision to secure that a technical measure is not taken against a subscriber until--
- (a) the period for bringing a subscriber appeal, or any further appeal to the First-tier Tribunal, in relation to the proposed measure has ended (or the subscriber has waived the right to appeal); and
 - (b) any such subscriber appeal or further appeal has been determined, abandoned or otherwise disposed of.

124L Enforcement of obligations

- (1) Sections 94 to 96 apply in relation to a contravention of an initial obligation or a technical obligation, or a contravention of an obligation under section 124G(6), as they apply in relation to a contravention of a condition set out 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 £250,000 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 internet service provider or copyright owner on whom the penalty is imposed;
 - (b) any steps taken by the provider or owner towards complying with the obligations contraventions of which have been notified to the provider or owner under section 94 (as applied); and
 - (c) any steps taken by the provider or owner 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.

124M Sharing of costs

- (1) The Secretary of State may by order specify provision that must be included in an initial obligations code or a technical obligations code about payment of contributions towards costs incurred under the copyright infringement provisions.

(2) Any provision specified under subsection (1) must relate to payment of contributions by one or more of the following only--

- (a) copyright owners;
- (b) internet service providers;
- (c) in relation to a subscriber appeal or a further appeal by a subscriber to the First-tier Tribunal, the subscriber.

(3) Provision specified under subsection (1) may relate to, in particular--

- (a) payment by a copyright owner of a contribution towards the costs that an internet service provider incurs;
- (b) payment by a copyright owner or internet service provider of a contribution towards the costs that OFCOM incur.

(4) Provision specified under subsection (1) may include, in particular--

- (a) provision about costs incurred before the provision is included in an initial obligations code or a technical obligations code;
- (b) provision for payment in advance of expected costs (and for reimbursement of overpayments where the costs incurred are less than expected);
- (c) provision about how costs, expected costs or contributions must be calculated;
- (d) other provision about when and how contributions must be paid.

(5) No order is to be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

124N Interpretation

In sections 124A to 124M and this section--

"apparent infringement", in relation to a copyright infringement report, means the infringement of copyright that the report states appears to have taken place;

"copyright infringement list" has the meaning given in section 124B(2);

"copyright infringement provisions" means sections 124A to 124M and this section;

"copyright infringement report" has the meaning given in section 124A(3);

"copyright owner" means--

- (a) a copyright owner within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act); or
- (b) someone authorised by that person to act on the person's behalf;

"copyright work" has the same meaning as in Part 1 of the Copyright, Designs and Patents Act 1988 (see section 1(2) of that Act);

"initial obligations" has the meaning given in section 124C(1);

"initial obligations code" has the meaning given in section 124A(2);

"internet access service" means an electronic communications service that--

- (a) is provided to a subscriber;
- (b) consists entirely or mainly of the provision of access to the internet; and
- (c) includes the allocation of an IP address or IP addresses to the subscriber to enable that access;

"internet service provider" means a person who provides an internet access service;

"IP address" means an internet protocol address;

"subscriber", in relation to an internet access service, means a person who--

- (a) receives the service under an agreement between the person and the provider of the service; and
- (b) does not receive it as a communications provider;

"subscriber appeal" means--

- (a) in relation to an initial obligations code, an appeal by a subscriber on grounds specified in the code in relation to--
 - (i) the making of a copyright infringement report;
 - (ii) notification under section 124A(4);
 - (iii) the inclusion or proposed inclusion of an entry in a copyright infringement list; or
 - (iv) any other act or omission in relation to an initial obligation or an initial obligations code;
- (b) in relation to a technical obligations code, an appeal by a subscriber on grounds specified in the code in relation to--
 - (i) the proposed taking of a technical measure; or
 - (ii) any other act or omission in relation to a technical obligation or a technical obligations code;

"technical measure" has the meaning given in section 124G(3);

"technical obligation" has the meaning given in section 124G(2);

"technical obligations code" means a code in force under section 124I.

Powers in relation to internet domain registries

124O Notification of failure in relation to internet domain registry

- (1) This section applies where the Secretary of State--
 - (a) is satisfied that a serious relevant failure in relation to a qualifying internet domain registry is taking place or has taken place, and
 - (b) wishes to exercise the powers under section 124P or 124R.
- (2) The Secretary of State must notify the internet domain registry, specifying the failure and a period during which the registry has the opportunity to make representations to the Secretary of State.

- (3) There is a relevant failure in relation to a qualifying internet domain registry if--
- (a) the registry, or any of its registrars or end-users, engages in prescribed practices that are unfair or involve the misuse of internet domain names, or
 - (b) the arrangements made by the registry for dealing with complaints in connection with internet domain names do not comply with prescribed requirements.
- (4) A relevant failure is serious, for the purposes of this section, if it has adversely affected or is likely adversely to affect--
- (a) the reputation or availability of electronic communications networks or electronic communications services provided in the United Kingdom or a part of the United Kingdom, or
 - (b) the interests of consumers or members of the public in the United Kingdom or a part of the United Kingdom.
- (5) In subsection (3) "prescribed" means prescribed by regulations made by the Secretary of State.
- (6) Before making regulations under subsection (3) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In this section and sections 124P to 124R--
- "end-user", in relation to a qualifying internet domain registry, means a person who has been or wants to be allocated an internet domain name that is or would be included in the register maintained by the registry;
- "qualifying internet domain registry" means a relevant body that--
- (a) maintains a relevant register of internet domain names, and
 - (b) operates a computer program or server that forms part of the system that enables the names included in the register to be used to access internet protocol addresses or other information by means of the internet;
- "registrar", in relation to a qualifying internet domain registry, means a person authorised by the registry to act on behalf of end-users in connection with the registration of internet domain names;
- "relevant body" means a company formed and registered under the Companies Act 2006 or a limited liability partnership;
- "relevant register of internet domain names" means a register of--
- (a) the names of second level internet domains that form part of the same UK-related top level internet domain, or
 - (b) the names of third level internet domains that form part of the same UK-related second level internet domain;
- "second level internet domain" means an internet domain indicated by the last two elements of an internet domain name;
- "third level internet domain" means an internet domain indicated by the last three elements of an internet domain name;
- "top level internet domain" means an internet domain indicated by the last element of an internet domain name.

(8) An internet domain is "UK-related" if, in the opinion of the Secretary of State, the last element of its name is likely to cause users of the internet, or a class of such users, to believe that the domain and its sub-domains are connected with the United Kingdom or a part of the United Kingdom.

124P Appointment of manager of internet domain registry

(1) This section applies where--

- (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
- (b) the period allowed for making representations has expired, and
- (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.

(2) The Secretary of State may by order appoint a manager in respect of the property and affairs of the internet domain registry for the purpose of securing that the registry takes the steps described in subsection (1)(c).

(3) The person appointed may be anyone whom the Secretary of State thinks appropriate.

(4) The appointment of the manager does not affect--

- (a) a right of a person to appoint a receiver of the registry's property, or
- (b) the rights of a receiver appointed by a person other than the Secretary of State.

(5) The Secretary of State must--

- (a) keep the order under review, and
- (b) if appropriate, discharge all or part of the order.

(6) The Secretary of State must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the registry.

(7) The Secretary of State must discharge the order before the end of the period of 2 years beginning with the day on which it was made (but this does not prevent the Secretary of State from making a further order in the same or similar terms).

(8) When discharging an order under this section, the Secretary of State may make savings and transitional provision.

(9) The Secretary of State must send a copy of an order made under this section to the registry as soon as practicable after it is made.

(10) In subsection (4), "receiver" includes a manager (other than a manager appointed by the registry) and a person who is appointed as both receiver and manager.

(11) In subsection (6)--

"administrative receiver" means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (N.I. 19));

"administrator" means a person appointed to manage the affairs, business and property of the registry under Schedule B1 to that Act or Schedule B1 to that Order.

124Q Functions of manager etc

- (1) An order under section 124P may make provision about the functions to be exercised by, and the powers of, the manager.
- (2) The order may, in particular--
 - (a) provide for the manager to have such of the functions of the registry's directors as are specified in the order (including functions exercisable only by a particular director or class of directors), and
 - (b) provide for one or more of the registry's directors to be prevented from exercising any of those functions.
- (3) The order may make provision about the remuneration of the manager, including in particular--
 - (a) provision for the amount of the remuneration to be determined by the Secretary of State, and
 - (b) provision for the remuneration to be payable from the property of the registry.
- (4) In carrying out the functions conferred by the order, the manager acts as the registry's agent.
- (5) The Secretary of State may apply to the court for directions in relation to any matter arising in connection with the functions or powers of the manager (and the costs of the application are to be paid by the registry).
- (6) On an application under subsection (5) the court may give such directions or make such orders as it thinks fit.
- (7) In this section "the court" means--
 - (a) in England and Wales, the High Court or a county court,
 - (b) in Scotland, the Court of Session or the sheriff, and
 - (c) in Northern Ireland, the High Court.
- (8) Where the registry is a limited liability partnership, this section applies as if references to a director of the registry were references to a member of the limited liability partnership.

124R Application to court to alter constitution of internet domain registry

- (1) This section applies where--
 - (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
 - (b) the period allowed for making representations has expired, and
 - (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.
- (2) The Secretary of State may apply to the court (as defined in section 124Q) for an order under this section.
- (3) The court may make an order--
 - (a) making alterations of the registry's constitution, and

(b) requiring the registry not to make any alterations, or any specified alterations, of its constitution without the leave of the court.

(4) An order under this section may contain only such provision as the court considers appropriate for securing that the registry remedies the failure specified in the notification under section 124O.

(5) In this section--

"constitution" means, in the case of a company, the articles of association and, in the case of a limited liability partnership, the limited liability partnership agreement;

"limited liability partnership agreement" means the agreement or agreements, whether express or implied, between the members of a limited liability partnership, and between the partnership and the members of the partnership, determining--

- (a) the mutual rights and duties of the members, and
- (b) their rights and duties in relation to the partnership.

Offences relating to networks and services

125 Dishonestly obtaining electronic communications services

(1) A person who--

- (a) dishonestly obtains an electronic communications service, and
- (b) does so with intent to avoid payment of a charge applicable to the provision of that service,

is guilty of an offence.

(2) It is not an offence under this section to obtain a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c 48) (dishonestly obtaining a broadcasting . . . service provided from a place in the UK).

(3) A person guilty of an offence under this section shall be liable--

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

126 Possession or supply of apparatus etc for contravening s 125

(1) A person is guilty of an offence if, with an intention falling within subsection (3), he has in his possession or under his control anything that may be used--

- (a) for obtaining an electronic communications service; or
- (b) in connection with obtaining such a service.

(2) A person is guilty of an offence if--

- (a) he supplies or offers to supply anything which may be used as mentioned in subsection (1); and

- (b) he knows or believes that the intentions in relation to that thing of the person to whom it is supplied or offered fall within subsection (3).
- (3) A person's intentions fall within this subsection if he intends--
- (a) to use the thing to obtain an electronic communications service dishonestly;
 - (b) to use the thing for a purpose connected with the dishonest obtaining of such a service;
 - (c) dishonestly to allow the thing to be used to obtain such a service; or
 - (d) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service.
- (4) An intention does not fall within subsection (3) if it relates exclusively to the obtaining of a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c 48).
- (5) A person guilty of an offence under this section shall be liable--
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (6) In this section, references, in the case of a thing used for recording data, to the use of that thing include references to the use of data recorded by it.

127 Improper use of public electronic communications network

- (1) A person is guilty of an offence if he--
- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
 - (b) causes any such message or matter to be so sent.
- (2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he--
- (a) sends by means of a public electronic communications network, a message that he knows to be false,
 - (b) causes such a message to be sent; or
 - (c) persistently makes use of a public electronic communications network.
- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (4) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service (within the meaning of the Broadcasting Act 1990 (c 42)).

Persistent misuse of network or service

128 Notification of misuse of networks and services

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services, they may give that person a notification under this section.
- (2) A notification under this section is one which--
 - (a) sets out the determination made by OFCOM;
 - (b) specifies the use that OFCOM consider constitutes persistent misuse; and
 - (c) specifies the period during which the person notified has an opportunity of making representations about the matters notified.
- (3) That period must not be less than the following--
 - (a) in an urgent case, seven days; and
 - (b) in any other case, one month.
- (4) A case is an urgent case for the purposes of subsection (3) if OFCOM consider--
 - (a) that the misuse in question is continuing; and
 - (b) that the harm it causes makes it necessary for it to be stopped as soon as possible.
- (5) For the purposes of this Chapter a person misuses an electronic communications network or electronic communications service if--
 - (a) the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or
 - (b) he uses the network or service to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety.
- (6) For the purposes of this Chapter the cases in which a person is to be treated as persistently misusing a network or service include any case in which his misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents--
 - (a) a pattern of behaviour or practice; or
 - (b) recklessness as to whether persons suffer annoyance, inconvenience or anxiety.
- (7) For the purpose of determining whether misuse on a number of different occasions constitutes persistent misuse for the purposes of this Chapter, each of the following is immaterial--
 - (a) that the misuse was in relation to a network on some occasions and in relation to a service on others;
 - (b) that different networks or services were involved on different occasions; and
 - (c) that the persons who were or were likely to suffer annoyance inconvenience or anxiety were different on different occasions.
- (8) If he considers that appropriate alternative means of dealing with it exists, the Secretary of State may by order provide that a use of a description specified in the order is not to be treated for the purposes

of this Chapter as a misuse of an electronic communications network or electronic communications service.

129 Enforcement notifications for stopping persistent misuse

- (1) This section applies where--
 - (a) a person ("the notified misuser") has been given a notification under section 128;
 - (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may give the notified misuser an enforcement notification if they are satisfied--
 - (a) that he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service; and
 - (b) that he has not, since the giving of the notification, taken all such steps as OFCOM consider appropriate for--
 - (i) securing that his misuse is brought to an end and is not repeated; and
 - (ii) remedying the consequences of the notified misuse.
- (3) An enforcement notification is a notification which imposes a requirement on the notified misuser to take all such steps for--
 - (a) securing that his misuse is brought to an end and is not repeated, and
 - (b) remedying the consequences of the notified misuse,

as may be specified in the notification.
- (4) A decision of OFCOM to give an enforcement notification to a person must fix a reasonable period for the taking of the steps required by the notification.
- (5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty shall be enforceable in civil proceedings by OFCOM--
 - (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c 36); or
 - (c) for any other appropriate remedy or relief.
- (7) References in this section to remedying the consequences of misuse include references to paying an amount to a person--
 - (a) by way of compensation for loss or damage suffered by that person; or
 - (b) in respect of annoyance, inconvenience or anxiety to which he has been put.

130 Penalties for persistent misuse

- (1) This section applies (in addition to section 129) where--
 - (a) a person ("the notified misuser") has been given a notification under section 128;
 - (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified misuser if he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service.
- (3) OFCOM may also impose a penalty on the notified misuser if he has contravened a requirement of an enforcement notification given in respect of the notified misuser.
- (4) The amount of a penalty imposed is to be such amount not exceeding £2,000,000 as OFCOM determine to be--
 - (a) appropriate; and
 - (b) proportionate to the misuse in respect of which it is imposed.
- (5) In making that determination OFCOM must have regard to--
 - (a) any representations made to them by the notified misuser;
 - (b) any steps taken by him for securing that his misuse is brought to an end and is not repeated; and
 - (c) any steps taken by him for remedying the consequences of the notified misuser.
- (6) Where OFCOM impose a penalty on a person under this section, they shall--
 - (a) notify the person penalised; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section--
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (8) It is to be possible for a person to be both liable for an offence under sections 125 to 127 and to have a penalty imposed on him under this section in respect of the same conduct.
- (9) 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 (4).
- (10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

131 Statement of policy on persistent misuse

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to the exercise of their powers under sections 128 to 130.

- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement 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 it.
- (4) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 128 to 130, to have regard to the statement for the time being in force under this section.

Powers to deal with emergencies

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

- (1) If the Secretary of State has reasonable grounds for believing that it is necessary to do so--
 - (a) to protect the public from any threat to public safety or public health, or
 - (b) in the interests of national security,

he may, by a direction to OFCOM, require them to give a direction under subsection (3) to a person ("the relevant provider") who provides an electronic communications network or electronic communications service or who makes associated facilities available.

- (2) OFCOM must comply with a requirement of the Secretary of State under subsection (1) by giving to the relevant provider such direction under subsection (3) as they consider necessary for the purpose of complying with the Secretary of State's direction.

- (3) A direction under this section is--

- (a) a direction that the entitlement of the relevant provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

- (4) A direction under subsection (3)--

- (a) must specify the networks, services and facilities 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 subsection (3)--

- (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 relevant 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 relevant 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) Where OFCOM give a direction under subsection (3), they shall, as soon as practicable after doing so, provide that person with an opportunity of--

- (a) making representations about the effect of the direction; and
- (b) proposing steps for remedying the situation.

(8) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (3) or otherwise), they may, without revoking it, at any time modify the terms of a direction under subsection (3) in such manner as they consider appropriate.

(9) If the Secretary of State considers it appropriate to do so, he may, by a direction to OFCOM, require them to revoke a direction under subsection (3).

(10) Where OFCOM modify or revoke a direction they have given under subsection (3), they may do so--

- (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 networks, services or facilities, or parts of a network, service or facility, as they may determine.

(11) It shall be the duty of OFCOM to comply with--

- (a) a requirement under subsection (9) to revoke a direction; and
- (b) a requirement contained in that direction as to how they should exercise their powers under subsection (10) in the case of the required revocation.

133 Enforcement of directions under s 132

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility--

- (a) while his entitlement to do so is suspended by a direction under section 132; or
- (b) in contravention of a restriction contained in such a direction.

(2) A person guilty of an offence under subsection (1) shall be liable--

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(3) The duty of a person to comply with a condition of a direction under section 132 shall be a duty owed to every person who may be affected by a contravention of the condition.

(4) Where a duty is owed by virtue of subsection (3) to a person--

- (a) a breach of the duty that causes that person to sustain loss or damage, and
- (b) an act which--
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and

(ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(5) In proceedings brought against a person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question.

(6) Sections [94-96A](#) to 99 apply in relation to a contravention of conditions imposed by a direction under section 132 as they apply in relation to a contravention of conditions set under section 45 [other than SMP apparatus conditions](#).

Restrictions in leases and licences

134 Restrictions in leases and licences

(1) This section applies where provision contained in a lease, licence or other agreement relating to premises has the effect of imposing on the occupier a prohibition or restriction under which his choice of--

- (a) the person from whom he obtains electronic communications services, or particular electronic communications services, or
- (b) the person through whom he arranges to be provided with electronic communications services, or particular electronic communications services,

is confined to a person with an interest in the premises, to a person selected by a person with such an interest or to persons who are one or the other.

(2) This section also applies where--

- (a) provision contained in a lease for a year or more has the effect of imposing any other prohibition or restriction on the lessee with respect to an electronic communications matter; or
- (b) provision contained in an agreement relating to premises to which a lease for a year or more applies has the effect of imposing a prohibition or restriction on the lessee with respect to such a matter.

(3) A provision falling within subsection (1) shall have effect--

- (a) as if the prohibition or restriction applied only where the lessor, licensor or other party to the agreement has not given his consent to a departure from the requirements imposed by the prohibition or restriction; and
- (b) as if the lessor, licensor or other party were required not to withhold that consent unreasonably.

(4) A provision falling within subsection (2)(a) or (b) shall have effect--

- (a) in relation to things done inside a building occupied by the lessee under the lease, or
- (b) for purposes connected with the provision to the lessee of an electronic communications service,

as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.

(5) Where (whether by virtue of this section or otherwise) a provision falling within subsection (1) or (2) imposes a requirement on a lessor, licensor or party to an agreement not unreasonably to withhold his consent--

- (a) in relation to an electronic communications matter, or
- (b) to the obtaining by the occupier of premises of an electronic communications service from or through a particular person,

the question whether the consent is unreasonably withheld has to be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.

(6) OFCOM may by order provide for this section not to apply in the case of such provisions as may be described in the order.

(7) References in this section to electronic communications matters are references to--

- (a) the provision of an electronic communications network or electronic communications service;
- (b) the connection of electronic communications apparatus to a relevant electronic communications network or of any such network to another; and
- (c) the installation, maintenance, adjustment, repair, alteration or use for purposes connected with the provision of such a network or service of electronic communications apparatus.

(8) In this section--

"alteration" has the same meaning as in the electronic communications code;

"lease" includes--

- (a) a leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and an agreement to grant such a tenancy, and
- (b) in Scotland, a sub-lease and an agreement to grant a sub-lease,

and "lessor" and "lessee" are to be construed accordingly;

"relevant electronic communications network" means--

- (a) a public electronic communications network that is specified for the purposes of this section in an order made by the Secretary of State; or
- (b) an electronic communications network that is, or is to be, connected (directly or indirectly) to such a network.

(9) This section applies to provisions contained in leases, licences or agreements granted or entered into before the commencement of this section to the extent only that provision to that effect is contained in an order made by OFCOM.

(10) This section is not to be construed as affecting the operation of paragraph 2(3) of the electronic communications code (lessees etc bound by rights granted under code by owners).

(11) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.

(12) Section 403 applies to the powers of OFCOM to make orders under this section.

(13) 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.

Reports on infrastructure etc

134A OFCOM reports on infrastructure etc

- (1) OFCOM must prepare reports in accordance with subsections (2) and (3) and each report must deal with--
 - (a) the electronic communications networks matters listed in section 134B(1), and
 - (b) the electronic communications services matters listed in section 134B(2).

- (2) The first report must--
 - (a) relate to the position on a day specified in the report which falls within the period of 12 months beginning with the day on which this section comes into force, and
 - (b) be sent to the Secretary of State by OFCOM not more than 2 months after the specified day.

- (3) A further report must--
 - (a) be prepared for each relevant period, and
 - (b) be sent to the Secretary of State by OFCOM as soon as practicable after the end of the relevant period.

- (4) "Relevant period" means--
 - (a) the period of 3 years beginning with the day specified in the first report, and
 - (b) each subsequent period of 3 years beginning with the end of the previous period.

- (5) Where there is a significant change in connection with a matter listed in section 134B(1) or (2) and OFCOM consider that the change should be brought to the attention of the Secretary of State, OFCOM must--
 - (a) prepare a report on the change, and
 - (b) send it to the Secretary of State as soon as practicable.

- (6) For the purposes of subsection (5), a change is significant if OFCOM consider that it has, or is likely to have, a significant adverse impact on--
 - (a) persons carrying on business in the United Kingdom or a part of the United Kingdom, or
 - (b) the general public in the United Kingdom or a part of the United Kingdom.

- (7) OFCOM must publish every report under this section--
 - (a) as soon as practicable after they send it to the Secretary of State, and
 - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(8) OFCOM may exclude information from a report when it is published under subsection (7) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

134B Networks and services matters

- (1) For the purposes of section 134A, the electronic communications networks matters are--
- (a) the different types of electronic communications network provided in the United Kingdom ("UK networks"),
 - (b) the geographic coverage of the different UK networks,
 - (c) the proportion of the population covered by the different UK networks,
 - (d) the extent to which UK networks share infrastructure,
 - (e) the capacity of the different UK networks,
 - (f) the extent to which the providers of the different UK networks allow other communications providers to use their networks to provide services,
 - (g) the amount of time for which the different UK networks are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
 - (h) the preparations made by providers of UK networks for responding to an emergency, including preparations for restoring normal operation of UK networks disrupted by the emergency, and
 - (i) the standard of the different UK networks in comparison with electronic communications networks provided in a range of other countries, having regard, in particular, to their coverage and capacity.
- (2) For the purposes of section 134A, the electronic communications services matters are--
- (a) the use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom,
 - (b) the different types of electronic communications service provided in the United Kingdom ("UK services"),
 - (c) the geographic coverage of the different UK services,
 - (d) the proportion of the population covered by the different UK services,
 - (e) the amount of time for which the different UK services are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
 - (f) the preparations made by providers of UK services for responding to an emergency, including preparations for restoring normal operation of UK services disrupted by the emergency, and
 - (g) the standard of the different UK services in comparison with electronic communications services provided in a range of other countries.
- (3) The preparations referred to in subsections (1)(h) and (2)(f) include--
- (a) the steps taken to assess the risks of different types of emergency occurring,
 - (b) the steps taken to reduce or remove those risks, and
 - (c) the testing of proposed responses to different types of emergency.

- (4) In a report under section 134A, OFCOM are required to include only information about, and analysis of, such networks, services and providers as they consider appropriate.
- (5) In this section "emergency" means an event or situation that seriously disrupts a UK network or UK service.

Reports on internet domain names

134C OFCOM reports on internet domain names

- (1) OFCOM must, if requested to do so by the Secretary of State--
- (a) prepare a report on matters specified by the Secretary of State relating to internet domain names, and
 - (b) send the report to the Secretary of State as soon as practicable.
- (2) The specified matters may, in particular, include matters relating to--
- (a) the allocation and registration of internet domain names, and
 - (b) the misuse of internet domain names.
- (3) OFCOM must publish every report under this section--
- (a) as soon as practicable after they send it to the Secretary of State, and
 - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (4) OFCOM may exclude information from a report when it is published under subsection (3) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

Information provisions

135 Information required for purposes of Chapter 1 functions

- (1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under this Chapter.
- (2) The persons falling within this subsection are--
- (a) a communications provider;
 - (b) a person who has been a communications provider;
 - (c) a person who makes, or has made, any associated facilities available to others;
 - (d) a person, other than a communications provider, to whom a universal service condition applies or has applied;
 - (e) a person who supplies electronic communications apparatus;
 - (f) a person not falling within the preceding paragraphs who appears to OFCOM to have information required by them for the purpose of carrying out their functions under this Chapter.

(3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require for any one or more of the following purposes--

- (a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under this Chapter has occurred or is occurring;
- (b) ascertaining or verifying the charges payable by a person under section 38;
- (c) ascertaining whether a provision of a condition set under section 45 which is for the time being in force continues to be effective for the purpose for which it was made;
- (d) ascertaining or verifying amounts payable by virtue of a condition falling within section 51(1)(d);
- (e) making a designation in accordance with regulations made under section 66;
- (f) carrying out a review under section 66 or 70;
- (g) identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter;
- ~~(h) ascertaining whether a question has arisen that gives rise to their duty under section 105;~~
- (i) considering a matter in exercise of that duty;
 - (ia) preparing a report under section 124F;
 - (ib) carrying out an assessment, taking steps or providing a report under section 124G;
 - (ic) preparing a report under section 134A;
 - (id) preparing a report under section 134C;
 - (ie) assessing the security of a public electronic communications network or a public electronic communications service;
 - (if) assessing the availability of a public electronic communications network
 - (ig) assessing electronic communications apparatus that is suitable for shared use;
- (j) statistical purposes connected with the carrying out of any of OFCOM's functions under this Chapter.

(3A) The description of information that a person may be required to provide under subsection (1) include in particular-

- (a) information concerning future developments of an electronic communications network or electronic communications service that could have an impact on the wholesale services made available by the person to competitors, and
- (b) If a market power determination made in relation to a wholesale market is in force in the person's case, accounting data relating to any retail market associated with the wholesale market.

(4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(5) The powers in this section are subject to the limitations in section 137.

136 Information required for related purposes

(1) OFCOM may require--

- (a) a communications provider, or
- (b) a person who makes associated facilities available to others,

to provide OFCOM with all such information as they consider necessary for the purpose specified in subsection (2).

- (2) That purpose is the carrying out--
- (a) with a view to publication, and
 - (b) in the interest of the end-users of public electronic communications services,

of comparative overviews of the quality and prices of such services.

- (3) OFCOM may also require--
- (a) a communications provider, or
 - (b) a person who makes associated facilities available to others,

to provide them, for use for such statistical purposes as they think fit, with information relating to any electronic communications network, electronic communications service or associated facilities.

(4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(5) The powers in this section are subject to the limitations in section 137.

137 Restrictions on imposing information requirements

(1) This section limits the purposes for which, and manner in which, information may be required under sections 135 and 136.

(2) OFCOM are not to require the provision of information for the purpose of ascertaining whether a contravention of a general condition has occurred, or is occurring, unless--

- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;
- (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the general condition in question has been complied with;
- (c) the condition in question is one which OFCOM have reason to suspect is one that has been or is being contravened; ~~or~~
- (d) the condition in question is one falling within section 51(1)(d); ~~or-~~
- (e) the condition in question is one relating to the effective and efficient use of telephone numbers.

(2A) OFCOM are not to require the provision of information for a purpose specified in section 135(3)(ie) or (if) unless—

- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;
- (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not an obligation under section 105A has been complied with; or
- (c) OFCOM have reason to suspect that an obligation under section 105A has been or is being contravened

(3) OFCOM are not to require the provision of information under section 135 or 136 except--

- (a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and
 - (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.
- (4) The reasons for requiring information for statistical purposes under section 135 or 136 must set out the statistical purposes for which the information is required.
- (5) Except in the case of a demand made in the manner authorised by subsection (6), a demand for information required under section 135 or 136 must be contained in a notice served on the person from whom the information is required.
- (6) In the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under section 38, the demand may--
- (a) be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who are described in the demand as the persons from whom the information is required; and
 - (b) take the form of a general demand for a person so described to provide information when specified conditions relevant to his liability to such charges are satisfied in his case.

138 Notification of contravention of information requirements

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 135 or 136, they may give that person a notification under this section.
- (2) A notification under this section is one which--
- (a) sets out the determination made by OFCOM;
 - (b) specifies the requirement and contravention in respect of which that determination has been made; ~~and~~
 - ~~(c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).~~
 - (c) specifies the period during which the person notified has an opportunity to make representations;
 - (d) specifies the information to be provided by the person to OFCOM in order to comply with a requirement under section 135 or 136;
 - (e) specifies any penalty which OFCOM are minded to impose in accordance with section 139; and
 - (f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 140.
- ~~(3) Those things are--~~
- ~~(a) making representations about the matters notified; and~~
 - ~~(b) complying with any notified requirement of which he remains in contravention.~~
- ~~(4) Subject to subsections (5) to (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.~~
- ~~(5) OFCOM may, if they think fit, allow a longer period for doing those things either--~~

- ~~(a) by specifying a longer period in the notification; or~~
- ~~(b) by subsequently, on one or more occasions, extending the specified period.~~

~~(6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.~~

~~(7) The person notified shall also have a shorter period if--~~

- ~~(a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;~~
- ~~(b) they have determined that, in those circumstances, a shorter period would be appropriate; and~~
- ~~(c) the shorter period has been specified in the notification.~~

(8) A notification under this section--

- (a) may be given in respect of more than one contravention; and
- (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(9) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if--

- (a) the contravention is one occurring after the time of the giving of the earlier notification;
- (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

(9A) OFCOM may not give a person a notification under this section in respect of a contravention of a requirement imposed under section 135(3)(g) if the information required was previously provided by the person to OFCOM within the period of 6 months ending with the day on which the requirement was imposed.

~~(10) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if--~~

- ~~(a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same requirement; and~~
- ~~(b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 139(2) that the contravention to which the previous notification related did occur.~~

139 Penalties for contravention of information requirements

(1) This section applies where a person is given a notification under section 138 which specifies a proposed penalty. This section applies where--

- ~~(a) a person ("the notified person") has been given a notification under section 138;~~
- ~~(b) OFCOM have allowed the notified person an opportunity of making representations about the matters notified; and~~

~~(c) the period allowed for the making of the representations has expired.~~

(2) OFCOM may ~~impose a penalty on the notified persons~~specify a penalty if--

~~(a) they are satisfied that he has, in one or more of the respects notified, been in contravention of the requirement notified under section 138;~~

~~(b) he has not, during the period allowed under that section, complied with the notified requirement; and~~

(c) no proceedings for an offence under section 144 have been brought against the notified person in respect of the contravention.

(3) Where a notification under section 138 relates to more than one contravention, a separate penalty may be ~~imposed~~specified in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be ~~imposed~~specified in respect of the period of contravention specified in the notification.

~~(4A) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after-~~

~~(a) the giving of a confirmation decision under section 139A(4)(c) which requires immediate action; or~~

~~(b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.~~

~~(4B) The amount of a penalty under subsection (4A) is to be such amount not exceeding £500 per day as OFCOM determine to be-~~

~~(a) appropriate; and~~

~~(b) proportionate to the contravention in respect of which it is impose.~~

(5) The amount of ~~a penalty~~any other penalty imposed~~notified~~ under this section is to be such amount not exceeding £50,000 as OFCOM determine to be both--

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

~~(6) In making that determination OFCOM must have regard to--~~

~~(a) any representations made to them by the notified person; and~~

~~(b) any steps taken by him towards complying with the requirements contraventions of which have been notified to him under section 138.~~

~~(7) Where OFCOM impose a penalty on a person under this section, they shall--~~

~~(a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and~~

~~(b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.~~

~~(8) A penalty imposed under this section--~~

~~(a) must be paid to OFCOM; and~~

~~(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.~~

(9) 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 (5).

(10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Enforcement of notification under section 138

139A.—(1) This section applies where—

(a) a person has been given a notification under section 138;

(b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and

(c) the period allowed for the making of representations has expired.

(2) OFCOM may—

(a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 138; or

(b) inform the person that they are satisfied with the person’s representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 138.

(4) A confirmation decision—

(a) must be given to the person without delay;

(b) must include reasons for the decision;

(c) may require immediate action by the person to comply with a requirement notified under section 138(2)(d), or may specify a period within which the person must comply with the requirement; and

(d) may require the person to pay—

(i) the penalty specified in the notification under section 138, or

(ii) such other lesser penalty as OFCOM consider appropriate in the light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention.

and may specify the period within which the penalty is to be paid.

(5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.

(6) That duty is enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or

(c) for any other appropriate remedy or relief.

(7) A penalty imposed by a confirmation decision—

- (a) must be paid to OFCOM; and
- (b) if not paid within the period specified by them, is to be recoverable by them accordingly.

Power to deal with urgent cases

139B.—(1) This section applies where OFCOM determine—

- (a) that they are entitled to give a notification under section 138 with respect to a contravention by a person (“P”) of a requirement imposed under section 135 or 136;
- (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
- (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.

(2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of—

- (a) a serious threat to the safety of the public, to public health or to national security;
- (b) serious economic or operational problems for persons (other than P) who are communications providers or persons who make associated facilities available; or
- (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(3) OFCOM may give P a direction—

- (a) that the entitlement of P to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
- (b) that that entitlement is restricted in the respects set out in the direction.

(4) Subsections (3) to (6) of section 140 apply in relation to a direction under subsection (3) as they apply in relation to a direction under section 140.

Confirmation of direction under section 139B

139C.—(1) As soon as reasonably practicable after giving a direction under section 139B(3), OFCOM must give the person to whom it is given—

- (a) an opportunity of making representations to them about the grounds on which it was given and its effect; and
- (b) an opportunity of proposing steps to remedy the situation.

(2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

- (a) whether the contravention providing the grounds for the giving of the direction did occur; and
- (b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM—

- (a) require additional time to consider representations received; or
- (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).

(4) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(5) If not, they must exercise their power to revoke it.

(6) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.

140 Suspending service provision for information contraventions

- (1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available ("the contravening provider") if they are satisfied--
- (a) that he is or has been in serious ~~and or~~ repeated contravention of requirements imposed under sections 135 and 136, or either of them;
 - (b) the requirements are not requirements imposed for purposes connected with the carrying out of OFCOM's functions in relation to SMP apparatus conditions;
 - (c) in the case of a repeated contravention, that an attempt, by the imposition of penalties ~~under section 139 or the giving of notifications under section 138 and confirmation decisions under section 139A,~~ or both, or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and
 - (d) ~~that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions. That the giving of the direction is appropriate and proportionate to the contravention in respect of which it is given.~~
- (2) A direction under this section is--
- (a) a direction that the entitlement of the contravening provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.
- (3) A direction under this section--
- (a) must specify the networks, services and facilities 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.
- (4) 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.
- (5) 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.

(6) If OFCOM consider it appropriate to do so (whether or not in consequence of any 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 networks, services or facilities, or parts of a network, service or facility, as they may determine.

(7) For the purposes of this section there are repeated contraventions by a person of requirements imposed under sections 135 and 136, or either of them, to the extent that--

~~(a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and~~

~~(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 such requirements;~~

(a) in the case of a previous notification of a contravention given to that person under section 138, OFCOM have given a confirmation decision to that person under section 139A(2);

(b) in the period of 24 months following the giving of that confirmation decisions, one or more further confirmation decisions have been given to the person in respect of contraventions of numbering conditions;

and for the purposes of this subsection it shall be immaterial whether the notifications confirmation decisions related to the same contravention or to different contraventions of the same or different requirements or of requirements under different sections.

141 Suspending apparatus supply for information contraventions

(1) OFCOM may give a direction under this section to a person who supplies electronic communications apparatus ("the contravening supplier") if they are satisfied--

- (a) that he is or has been in serious and repeated contravention of requirements imposed under section 135;
- (b) that an attempt, by the imposition of penalties under section 139 or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and
- (c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.

(2) A direction under this section is--

- (a) a direction to the contravening supplier to cease to act as a supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description); or
- (b) a direction imposing such restrictions as may be set out in the direction on the supply by that supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description).

(3) A direction under this section takes effect, except so far as it otherwise provides, for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

- (4) A direction under this section--
- (a) may provide for a prohibition or restriction to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with a prohibition or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening supplier as appear to OFCOM to be appropriate for the purpose of protecting that supplier's customers.
- (5) Those conditions may include a condition requiring the making of payments--
- (a) by way of compensation for loss or damage suffered by the contravening supplier'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.
- (6) 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 apparatus or descriptions of apparatus as they may determine.
- (7) For the purposes of this section contraventions by a person of requirements imposed under section 135 are repeated contraventions if--
- (a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and
 - (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 such requirements;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements.

142 Procedure for directions under ss 140 and 141

- (1) Except in an urgent case, [or a case where a proposed direction has been notified to a person in accordance with section 138\(2\)\(f\)](#) OFCOM are not to give a direction under section 140 or 141 unless they have--
- (a) notified the contravening provider or contravening supplier of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;
 - (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and
 - (c) considered every representation and proposal made to them during the period allowed by them for the contravening provider or the contravening supplier to take advantage of that opportunity.

~~(2) That period must be one ending not less than one month after the day of the giving of the notification.~~

(2A) That period must be—

(a) in relation to a direction under section 140, such reasonable period as OFCOM may determine, and

(b) in relation to a direction under section 141, a period ending not less than one month after the day of the giving of the notification.

(3) As soon as practicable after giving a direction under section 140 or 141 in an urgent case, OFCOM must provide the contravening provider or contravening supplier with an opportunity of--

- (a) making representations about the effect of the direction and of any of its conditions; and
- (b) proposing steps for remedying the situation.

(3A) In relation to a direction under section 140 in an urgent case, as soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).

(4) A case is an urgent case for the purposes of this section if OFCOM--

- (a) consider that it would be inappropriate, because the contraventions in question fall within subsection (5), to allow time, before giving a direction under section 140 or 141, for the making and consideration of representations; and
- (b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).

(5) The contraventions fall within this subsection if they have resulted in, or create an immediate risk of--

- (a) a serious threat to the safety of the public, to public health or to national security;
- (b) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available; or
- (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(6) In this section--

"contravening provider" has the same meaning as in section 140; and

"contravening supplier" has the same meaning as in section 141.

143 Enforcement of directions under ss 140 and 141

- (1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility--
- (a) while his entitlement to do so is suspended by a direction under section 140; or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person is guilty of an offence if he supplies electronic communications apparatus--
- (a) while prohibited from doing so by a direction under section 141; or
 - (b) in contravention of a restriction contained in such a direction.
- (3) A person guilty of an offence under this section shall be liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

~~(4) Sections 94 to 99 apply in relation to a contravention of conditions imposed by a direction under section 140 or 141 as they apply in relation to a contravention of conditions set under section 45.~~

(4) Sections 96A to 99 apply in relation to a contravention of conditions imposed by a direction under section 139B or 140 as they apply in relation to a contravention of conditions set under section 45, other than SMP apparatus conditions.

(5) Sections 94 to 96 and 97 to 99 apply in relation to a contravention of conditions imposed by a direction under section 141 as they apply in relation to a contravention of SMP apparatus conditions.

144 Offences in connection with information requirements

- (1) A person who fails to provide information in accordance with a requirement of OFCOM under section 135 or 136 is guilty of an offence and shall be liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (2) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show--
- (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
 - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (3) A person is guilty of an offence if--
- (a) in pursuance of any requirement under section 135 or 136, he provides any information that is false in any material particular; and
 - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.
- (4) A person guilty of an offence under subsection (3) shall be liable--

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(5) Proceedings for an offence under subsection (1) may be brought in respect of a contravention by a person of a requirement imposed under section 135 or 136 only if--

- (a) OFCOM have given the person a notification under section 138 in respect of that contravention;
- (b) ~~the period allowed under that section for doing the things mentioned in subsection (3) of that section has expired without the required information having been provided; and the notification required the person to provide information, a confirmation decision has been given under section 139A in respect of that requirement and the period allowed under that decision has expired without the required information having been provided; and~~
- (c) OFCOM have not imposed a financial penalty under section 139 in respect of that contravention.

145 Statement of policy on information gathering

(1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to--

- (a) the exercise of their powers under sections 135 to 136; and
- (b) the uses to which they are proposing to put information obtained under those sections.

(2) OFCOM may from time to time revise that statement as they think fit.

(3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement 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 it.

(4) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 135 to 144 to have regard to the statement for the time being in force under this section.

146 Provision of information by OFCOM

(1) OFCOM must comply with a request made by a person for the purposes of this section--

- (a) to notify the person whether or not a notification is required to be submitted by him under section 33;
- (b) to notify the person whether a notification submitted by him for the purposes of that section satisfies the requirements of this Chapter;
- (c) to provide the person with such information about his rights as may be necessary for the purpose of facilitating the negotiation by him of his right to network access; or
- (d) to provide the person with such information as they consider necessary to enable the applicant to apply for a direction under section 106 to be made in his case.

(2) A request for the purposes of this section must be made in such manner as OFCOM may require.

(3) OFCOM are not required to comply with a request under this section if (without having been asked to do so) they have already given that person the notification or information for which he is asking.

(4) Any notification or information which under subsection (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request for the notification or information was made to OFCOM.

Rights of third parties to use information without charge

146A(1) Any person has a right to use, free of charge, information published by a communications provider if the use is for the purpose specified in subsection (2).

(2) That purpose is to sell or make available an interactive guide or other technique for evaluating the cost of alternative usage patterns in relation to electronic communications services.

Abolition of telecommunications licensing etc

147 Repeal of provisions of Telecommunications Act 1984

The following provisions of the Telecommunications Act 1984 (c 12) shall cease to have effect--

- (a) sections 5 to 8 (licensing provisions);
- (b) sections 9 to 11 (public telecommunications systems);
- (c) sections 12 to 15 (modification of licences);
- (d) sections 16 to 19 (enforcement of licences); and
- (e) sections 27A to 27L (standards of performance of designated public telecommunications operators).

Local authority powers in relation to networks and services

148 Powers of local authorities in connection with networks

(1) A local authority may borrow money for the purpose of providing a public electronic communications network or public electronic communications service.

(2) A local authority may--

- (a) provide a public electronic communications network part of which is outside their area; and
- (b) provide a public electronic communications service even if some of the persons to whom they provide the service are outside their area.

(3) In this section, a "local authority" means--

- (a) in relation to England, a London borough council or a district council;
- (b) in relation to Wales, a county council or a county borough council;
- (c) in Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 (c 39).

Grants for networks and services in Northern Ireland

149 Grants by Department of Enterprise, Trade and Investment

- (1) The Department of Enterprise, Trade and Investment may, in accordance with this section, make payments to persons engaged in, or in commercial activities connected with--
- (a) the provision of electronic communications networks and electronic communications services in Northern Ireland; or
 - (b) improving the extent, quality and reliability of such networks or services.
- (2) A payment shall not be made under this section unless in the opinion of the Department of Enterprise, Trade and Investment--
- (a) the making of the payment is likely to achieve--
 - (i) one or more of the purposes set out in subsection (1); and
 - (ii) any other purposes prescribed by regulations made by that Department with the approval of the Department of Finance and Personnel; and
 - (b) the amount of the payment is reasonable having regard to all the circumstances.
- (3) Payments under this section shall--
- (a) be of such amounts, and
 - (b) be made subject to such conditions (including conditions as to repayment),

as the Department of Enterprise, Trade and Investment may determine.

- (4) This section extends only to Northern Ireland.

150 Grants by district councils

- (1) This section applies where a district council in Northern Ireland consider that it would be for the benefit of their area--
- (a) for a public electronic communications network or electronic communications service to be provided by a particular person;
 - (b) for facilities to be made available by a particular person for the purposes of, or in connection with, the provision of such a network or service; or
 - (c) for such a network or service that is being provided by a particular person, or for any such facilities that are being so made available by a particular person, to continue to be provided or made available.
- (2) The district council may--
- (a) undertake to pay to that person, and
 - (b) pay him,

whatever sums they think appropriate for, or towards, compensating him for losses sustained in the provision of the network or service or in making the facilities available.

- (3) For the purposes of this section it is immaterial--
- (a) in the case of a network, whether any part of the network is situated in the council's area; and
 - (b) in the case of a service or facility, whether any of the persons to whom the service or facility is provided or made available are in that area.

Interpretation of Chapter 1

Proposals of EU significance

150A.—(1) This section applies in relation to a proposal—

- (a) to set, modify or revoke a condition under section 45;
- (b) to give a direction, approval or consent for the purposes of such a condition;
- (c) to modify or withdraw such a direction, approval or consent;
- (d) to identify a market for the purposes of making or reviewing a market power determination; or
- (e) to make or review a market power determination.

(2) The proposal is of EU significance for the purposes of this Chapter if—

- (a) paragraph (3) of Article 7 of the Framework Directive applies, or would apply but for paragraph (9) of that Article, in relation to it;
- (b) (in a case within paragraph (a), (b) or (c) of subsection (1)) the condition is an access-related condition falling within section 73(2) or an SMP services condition;
- (c) (in a case within paragraph (d) or (e) of subsection (1)) the market in question is a services market.
- (d) in OFCOM's opinion it would affect trade between member States.

151 Interpretation of Chapter 1

(1) In this Chapter--

"the Access Directive" means Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities as amended by Directive 2009/140/EC of the European Parliament and of the Council;

"access-related condition" means a condition set as an access-related condition under section 45;

"allocation" and "adoption", in relation to telephone numbers, and cognate expressions, are to be construed in accordance with section 56;

"apparatus market", in relation to a market power determination, is to be construed in accordance with section 46(9)(b);

"designated universal service provider" means a person who is for the time being designated in accordance with regulations under section 66 as a person to whom universal service conditions are applicable;

"electronic communications apparatus"--

- (a) in relation to SMP apparatus conditions and in section 141, means apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or

other signals (within the meaning of section 32) that are transmitted by means of an electronic communications network; and

(b) in all other contexts, has the same meaning as in the electronic communications code;

"the electronic communications code" has the meaning given by section 106(1);

"end-user", in relation to a public electronic communications service, means--

(a) a person who, otherwise than as a communications provider, is a customer of the provider of that service;

(b) a person who makes use of the service otherwise than as a communications provider; or

(c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;

"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 as amended by Directive 2009/140/EC of the European Parliament and of the Council;

"general condition" means a condition set as a general condition under section 45;

"interconnection" is to be construed in accordance with subsection (2);

"market power determination" means--

(a) a determination, for the purposes of provisions of this Chapter, that a person has significant market power in an identified services market or an identified apparatus market, or

(b) a confirmation for such purposes of a market power determination reviewed on a further analysis under section 84 or 85;

"misuse", in relation to an electronic communications network or electronic communications service, is to be construed in accordance with section 128(5) and (8), and cognate expressions are to be construed accordingly;

"network access" is to be construed in accordance with subsection (3);

"persistent" and "persistently", in relation to misuse of an electronic communications network or electronic communications service, are to be construed in accordance with section 128(6) and (7);

"premium rate service" is to be construed in accordance with section 120(7);

"privileged supplier condition" means a condition set as a privileged supplier condition under section 45;

"provider", in relation to a premium rate service, is to be construed in accordance with section 120(9) to (12), and cognate expressions are to be construed accordingly;

"public communications provider" means--

(a) a provider of a public electronic communications network;

(b) a provider of a public electronic communications service; or

(c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service;

"public electronic communications network" means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;

"public electronic communications service" means any electronic communications service that is provided so as to be available for use by members of the public;

"regulatory authorities" is to be construed in accordance with subsection (5);

"relevant international standards" means--

- (a) any 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;

"service interoperability" means interoperability between different electronic communications services;

"services market", in relation to a market power determination or market identification, is to be construed in accordance with section 46(8)(a);

"significant market power" is to be construed in accordance with section 78;

"SMP condition" means a condition set as an SMP condition under section 45, and "SMP services condition" and "SMP apparatus condition" are to be construed in accordance with subsections (8) and (9) of that section respectively;

"telephone number" has the meaning given by section 56(5);

"the Universal Service Directive" means Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services [as amended by Directive 2009/136/EC of the European Parliament and of the Council](#);

"universal service condition" means a condition set as a universal service condition under section 45;

"the universal service order" means the order for the time being in force under section 65.

(2) In this Chapter references to interconnection are references to the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one public electronic communications network to another for the purpose of enabling the persons using one of them to be able--

- (a) to communicate with users of the other one; or
- (b) to make use of services provided by means of the other one (whether by the provider of that network or by another person).

(3) In this Chapter references to network access are references to--

- (a) interconnection of public electronic communications networks; or
- (b) any services, facilities or arrangements which--

- (i) are not comprised in interconnection; but
- (ii) are services, facilities or arrangements by means of which ~~a communications provider or person making available associated facilities~~ a person is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of anything mentioned in subsection (4);

and references to providing network access include references to providing any such services, making available any such facilities or entering into any such arrangements.

(4) The things referred to in subsection (3)(b) are--

- (a) any electronic communications network or electronic communications service provided by another communications provider;
- (b) any apparatus comprised in such a network or used for the purposes of such a network or service;
- (ba) any electronic communications apparatus;
- (c) any facilities made available by another that are associated facilities by reference to any network or service (whether one provided by that provider or by another);
- (d) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an electronic communications service.

(4A) In subsection (3)(b)(ii) and (4)(d), the references to an electronic communications service include the conveyance by means of an electronic communications network of signals, including an information society service or content service so conveyed.

(4B) In subsection (4A)—

“content service” has the meaning given by section 32(7), and

“information society service” has the meaning given by Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

(5) References in this Chapter to the regulatory authorities of member States are references to such of the authorities of the member States as have been notified to the European Commission as the regulatory authorities of those States for the purposes of the Framework Directive.

(6) For the purposes of this Chapter, where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, that contravention shall be taken to continue after the end of that period, or after that time, until that thing is done.

(7) References in this Chapter to remedying the consequences of a contravention include references to paying an amount to a person--

- (a) by way of compensation for loss or damage suffered by that person; or
- (b) in respect of annoyance, inconvenience or anxiety to which he has been put.

(8) In determining for the purposes of provisions of this Chapter whether a contravention is a repeated contravention for any purposes, a notification of a contravention under that provision shall be disregarded if it has been withdrawn before the imposition of a penalty in respect of the matters notified.

(9) For the purposes of this section a service is made available to members of the public if members of the public are customers, in respect of that service, of the provider of that service.

Chapter 3

Disputes and Appeals

Disputes

185 Reference of disputes to OFCOM

- (1) This section applies in the case of a dispute relating to the provision of network access if it is--
- (a) a dispute between different communications providers;
 - (b) a dispute between a communications provider and a person who makes associated facilities available;
 - (c) a dispute between different persons making such facilities available;

~~(d) a dispute relating to the subject-matter of a condition set under section 74(1) between a communications provider or person who makes associated facilities available and a person who (without being such a person) is a person to whom such a condition applies; or~~

~~(e) a dispute relating to the subject-matter of such a condition between different persons each of whom (without being a communications provider or a person who makes associated facilities available) is a person to whom such a condition applies.~~

(1A) This section also applies in the case of a dispute relating to the provision of network access if--

(a) it is a dispute between a communications provider and a person who is identified, or is a member of a class identified, in a condition imposed on the communications provider under section 45; and

(b) the dispute relates to entitlements to network access that the communications provider is required to provide to that person by or under that condition.

- (2) This section also applies in the case of any other dispute if--

(a) it relates to rights or obligations conferred or imposed by or under a condition set under section 45, or any of the enactments relating to the management of the radio spectrum~~this Part or any of the enactments relating to the management of the radio spectrum that are not contained in this Part;~~

(b) it is a dispute between different communications providers; and

(c) it is not an excluded dispute.

- (3) Any one or more of the parties to the dispute may refer it to OFCOM.

- (4) A reference made under this section is to be made in such manner as OFCOM may require.

- (5) The way in which a requirement under subsection (4)--

(a) is to be imposed, or

(b) may be withdrawn or modified,

is by a notice published in such manner as OFCOM consider appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.

- (6) Requirements imposed under subsection (4) may make different provision for different cases.

- (7) A dispute is an excluded dispute for the purposes of subsection (2) if it is about--

(a) obligations imposed on a communications provider by SMP apparatus conditions;

- ~~(b) contraventions of sections 125 to 127;~~
- ~~(c) obligations imposed on a communications provider by or under any of sections 128 to 131; or~~
- ~~(d) the operation in the case of a communications provider of section 134.~~

(8) For the purposes of this section--

- (a) the disputes that relate to the provision of network access include disputes as to the terms or conditions on which it is or may be provided in a particular case; and
- (b) the disputes that relate to an obligation include disputes as to the terms or conditions on which any transaction is to be entered into for the purpose of complying with that obligation.

Power of OFCOM to invite parties to refer dispute

185A. OFCOM may invite any one or more of the parties to a dispute falling within section 185(1) to refer the dispute to OFCOM under section 185(3).

186 Action by OFCOM on dispute reference

(1) This section applies where a dispute is referred to OFCOM under and in accordance with section 185.

(2) OFCOM must decide whether or not it is appropriate for them to handle the dispute.

(2A) In relation to a dispute falling within subsection 185(1), OFCOM may in particular take into account their priorities and available resources in considering whether it is appropriate for them to handle the dispute.

(3) In relation to a dispute falling within section 185(1A) or (2), Unless they consider--

- (a) that there are alternative means available for resolving the dispute,
- (b) that a resolution of the dispute by those means would be consistent with the Community requirements set out in section 4, and
- (c) that a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it,

their decision must be a decision that it is appropriate for them to handle the dispute.

(4) As soon as reasonably practicable after OFCOM have decided--

- (a) that it is appropriate for them to handle the dispute, or
- (b) that it is not,

they must inform each of the parties to the dispute of their decision and of their reasons for it.

(5) The notification must state the date of the decision.

(6) In relation to a dispute falling within section 185(1A) or (2), Where--

- (a) OFCOM decide that it is not appropriate for them to handle the dispute, but
- (b) the dispute is not resolved by other means before the end of the four months after the day of OFCOM's decision,

the dispute may be referred back to OFCOM by one or more of the parties to the dispute.

187 Legal proceedings about referred disputes

(1) Where a dispute is referred or referred back to OFCOM under this Chapter, the reference is not to prevent--

- (a) the person making it,
- (b) another party to the dispute,
- (c) OFCOM, or
- (d) any other person,

from bringing, or continuing, any legal proceedings with respect to any of the matters under dispute.

(2) Nor is the reference or reference back to OFCOM under this Chapter of a dispute to prevent OFCOM from--

- (a) giving a notification in respect of something that they have reasonable grounds for believing to be a contravention of any obligation imposed by or under any an enactment;
- (b) exercising any of their other powers under any enactment in relation to a contravention of such an obligation; or
- (c) taking any other step in preparation for or with a view to doing anything mentioned in the preceding paragraphs.

(3) If, in any legal proceedings with respect to a matter to which a dispute relates, the court orders the handling of the dispute by OFCOM to be stayed or sisted--

- (a) OFCOM are required to make a determination for resolving the dispute only if the stay or sist is lifted or expires; and
- (b) the period during which the stay or sist is in force must be disregarded in determining the period within which OFCOM are required to make such a determination.

(4) Subsection (1) is subject to section 190(8) and to any agreement to the contrary binding the parties to the dispute.

(5) In this section "legal proceedings" means civil or criminal proceedings in or before a court.

188 Procedure for resolving disputes

(1) This section applies where--

- (a) OFCOM have decided under section 186(2) that it is appropriate for them to handle a dispute; or
- (b) a dispute is referred back to OFCOM under section 186(6).

(2) OFCOM must--

- (a) consider the dispute; and
- (b) make a determination for resolving it.

- (3) The procedure for the consideration and determination of the dispute is to be the procedure that OFCOM consider appropriate.
- (4) In the case of a dispute referred back to OFCOM under section 186(6), that procedure may involve allowing the continuation of a procedure that has already been begun for resolving the dispute by alternative means.
- (5) Except in exceptional circumstances and subject to section 187(3), OFCOM must make their determination no more than four months after the following day--
- (a) in a case falling within subsection (1)(a), the day of the decision by OFCOM that it is appropriate for them to handle the dispute; and
 - (b) in a case falling within subsection (1)(b), the day on which the dispute is referred back to them.
- (6) Where it is practicable for OFCOM to make their determination before the end of the four month period, they must make it as soon in that period as practicable.
- (7) OFCOM must--
- (a) send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute; and
 - (b) publish so much of their determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (8) The publication of information under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention, to the extent that they consider appropriate, of members of the public.

189 Disputes involving other member States

- (1) This section applies where it appears to OFCOM that a dispute referred or referred back to them under this Chapter ([other than a dispute falling within section 185\(1\)](#)) relates partly to a matter falling within the jurisdiction of the regulatory authorities of another member State.
- (2) A dispute relates to matters falling within the jurisdiction of the regulatory authorities of another member State to the extent that--
- (a) it relates to the carrying on of activities by one or both of the parties to the dispute in more than one member State or to activities carried on by different parties to the dispute in different member States; and
 - (b) the activities to which the dispute relates, so far as they are carried on in another member State, are carried on in the member State for which those authorities are the regulatory authorities.
- (3) For the purposes of subsection (2) the activities that are carried on in a member State include anything done by means of an electronic communications network, or part of such a network, which is situated in that member State.
- (4) Before taking any steps under this Chapter in relation to the reference or the dispute, OFCOM ~~must consult the other regulatory authorities within whose jurisdiction the matter falls.~~
- [\(a\) must co-ordinate their efforts with the other regulatory authorities within whose jurisdiction the matter falls,](#)
 - [\(b\) may consult BEREC in order to bring about a consistent resolution of the dispute, and](#)

(c) may request BEREC to adopt an opinion as to the action to be taken to resolve the dispute.

(5) It shall be the duty of OFCOM to secure that steps taken in relation to the reference or dispute (whether taken by them or by the other regulatory authorities) are, so far as practicable, agreed between OFCOM and those authorities.

(5A) Where an opinion is received from BEREC in relation to the reference or dispute, it shall be the duty of OFCOM to secure that steps taken in relation to the reference or dispute take account of the opinion (whether the opinion was requested by OFCOM or by the other regulatory authorities).

(6) Accordingly, section 188 is to have effect in relation to the reference as if the period for making a determination which is specified in subsection (5) of that section were such period (if any) as may be agreed between--

- (a) OFCOM; and
- (b) the other regulatory authorities within whose jurisdiction the matter falls.

(7) OFCOM must—

(a) ensure, so far as practicable, that a period agreed under subsection (6) is long enough for BEREC to provide an opinion, if one has been requested by OFCOM or by the other regulatory authorities, and

(b) agree to any necessary extension of the period if an opinion is requested from BEREC (by OFCOM or by the other regulatory authorities) after the period has been agreed.

(8) Subsections (7) do not apply if the dispute in question has resulted in, or creates an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities, or for other users of the radio spectrum.

190 Resolution of referred disputes

(1) Where OFCOM make a determination for resolving a dispute referred to them under this Chapter, their only powers are those conferred by this section.

(2) Their main power (except in the case of a dispute relating to rights and obligations conferred or imposed by or under the enactments relating to the management of the radio spectrum) is to do one or more of the following--

- (a) to make a declaration setting out the rights and obligations of the parties to the dispute;
- (b) to give a direction fixing the terms or conditions of transactions between the parties to the dispute;
- (c) to give a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM; and
- (d) for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other, to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.

(2A) In relation to a dispute falling within section 185(1), OFCOM must exercise their powers under subsection (2) in the way that seems to them most appropriate for the purpose of securing—

- (a) efficiency;
- (b) sustainable competition;
- (c) efficient investment and innovation; and
- (d) the greatest possible benefit for the end-users of public electronic communications services.

(3) Their main power in the excepted case is just to make a declaration setting out the rights and obligations of the parties to the dispute.

(4) Nothing in this section prevents OFCOM from exercising the following powers in consequence of their consideration under this Chapter of any dispute--

- (a) their powers under Chapter 1 of this Part to set, modify or revoke general conditions, universal service conditions, access related conditions, privileged supplier conditions or SMP conditions;
- (b) their powers to vary, modify or revoke wireless telegraphy licences or grants of recognised spectrum access;
- (c) their power to make, amend or revoke regulations under section 8 or 45 of the Wireless Telegraphy Act 2006.

(5) In the case of a dispute referred back to OFCOM under section 186(6)--

- (a) OFCOM may, in making their determination, take account of decisions already made by others in the course of an attempt to resolve the dispute by alternative means; and
- (b) the determination made by OFCOM may include provision ratifying decisions so made.

(6) Where OFCOM make a determination for resolving a dispute, they may require a party to the dispute--

- (a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to OFCOM, or in connection with it; and
- (b) to make payments to OFCOM in respect of costs and expenses incurred by them in dealing with the dispute.

and may determine the amount of the costs and when the costs are to be paid.

(6A) OFCOM may not, under subsection (6)(a), require a party to the dispute to make payments to another party unless OFCOM have considered—

- (a) the conduct of the party before and after the reference to OFCOM (including, in particular, whether any attempt has been made to resolve the dispute), and
- (b) whether OFCOM has made a decision in the party's favour in respect of the whole or a part of the dispute.

(6B) OFCOM may not, under subsection (6)(b), require payments to be made to them by a party to the dispute unless—

- (a) the dispute relates to the rights and obligations of the parties to the dispute under the enactments relating to the management of the radio spectrum, or
- (b) they have considered the matters referred to in subsection (6A)(a) and (b).

~~(7) OFCOM are not, under subsection (6)(b), to require payments to be made to them by a party to the dispute except--~~

- ~~(a) in a case where the dispute relates to the rights and obligations of the parties to the dispute under the enactments relating to the management of the radio spectrum; or~~
~~(b) where it appears to OFCOM that the reference of the dispute by that party was frivolous or vexatious or that that party has otherwise abused the right of reference conferred by this Chapter.~~

(8) A determination made by OFCOM for resolving a dispute referred or referred back to them under this Chapter binds all the parties to the dispute.

(9) Subsection (8) is subject to section 192.

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

(1) Where a dispute has been referred or referred back to OFCOM under this Chapter, they may require any person to whom subsection (2) applies to provide them with all such information as they may require for the purpose of--

- (a) deciding whether it is appropriate for them to handle the dispute;
- (b) determining whether it is necessary for them to consult the regulatory authorities of another member State; or
- (c) considering the dispute and making a determination for resolving it.

(2) This subsection applies to--

- (a) a party to the dispute; and
- (b) a person who is not a party to the dispute but appears to OFCOM to have information that is relevant to the matters mentioned in subsection (1)(a) to (c).

(3) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(4) In fixing the period within which information is to be provided in accordance with a requirement under this section OFCOM must have regard, in particular, to--

- (a) their obligation to make a determination for resolving the dispute within the period specified in section 188;
- (b) the nature of the dispute; and
- (c) the information that is required.

(5) Sections 138 to 144 apply for the enforcement of a requirement under this section as they apply for the enforcement of requirements under section 135 or 136.

~~(6) In its application for the enforcement of this section, section 138 is to have effect as if it allowed OFCOM to specify such period of less than one month for doing the things mentioned in subsection (3) of that section as they consider appropriate for the purpose of enabling them to comply with an obligation of theirs to make a determination within a particular period.~~

Appeals

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

- (1) This section applies to the following decisions--
- (a) a decision by OFCOM under this Part or any of Parts 1 to 3 of the Wireless Telegraphy Act 2006 that is not a decision specified in Schedule 8;
 - (b) a decision (whether by OFCOM or another) to which effect is given by a direction, approval or consent given for the purposes of a provision of a condition set under section 45;
 - (c) a decision to which effect is given by the modification or withdrawal of such a direction, approval or consent;
 - (d) a decision by the Secretary of State to which effect is given by one of the following--
 - (i) a specific direction under section 5 that is not about the making of a decision specified in Schedule 8;
 - (ii) a restriction or condition set by regulations under section 109;
 - (ia) an order under section 124P;
 - (iii) a direction to OFCOM under section 132;
 - (iv) a specific direction under section 5 of the Wireless Telegraphy Act 2006 that is not about the making of a decision specified in Schedule 8.
- (2) A person affected by a decision to which this section applies may appeal against it to the Tribunal.
- (3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) The notice of appeal must set out--
- (a) the provision under which the decision appealed against was taken; and
 - (b) the grounds of appeal.
- (6) The grounds of appeal must be set out in sufficient detail to indicate--
- (a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
 - (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM, by the Secretary of State or by another person.
- (7) In this section and Schedule 8 references to a decision under an enactment--
- (a) include references to a decision that is given effect to by the exercise or performance of a power or duty conferred or imposed by or under an enactment; but
 - (b) include references to a failure to make a decision, and to a failure to exercise a power or to perform a duty, only where the failure constitutes a failure to grant an application or to comply with any other form of request to make the decision, to exercise the power or to perform the duty;
- and references in the following provisions of this Chapter to a decision appealed against are to be construed accordingly.
- (8) For the purposes of this section and the following provisions of this Chapter a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by or under an en-

actment shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed.

193 Reference of price control matters to the Competition Commission

(1) Tribunal rules must provide in relation to appeals under section 192(2) relating to price control that the price control matters arising in that appeal, to the extent that they are matters of a description specified in the rules, must be referred by the Tribunal to the Competition Commission for determination.

(2) Where a price control matter is referred in accordance with Tribunal rules to the Competition Commission for determination, the Commission is to determine that matter--

- (a) in accordance with the provision made by the rules;
- (b) in accordance with directions given to them by the Tribunal in exercise of powers conferred by the rules; and
- (c) subject to the rules and any such directions, using such procedure as the Commission consider appropriate.

(3) The provision that may be made by Tribunal rules about the determination of a price control matter referred to the Competition Commission in accordance with the rules includes provision about the period within which that matter is to be determined by that Commission.

(4) Where the Competition Commission determines a price control matter in accordance with Tribunal rules, they must notify the Tribunal of the determination they have made.

(5) The notification must be given as soon as practicable after the making of the notified determination.

(6) Where a price control matter arising in an appeal is required to be referred to the Competition Commission under this section, the Tribunal, in deciding the appeal on the merits under section 195, must decide that matter in accordance with the determination of that Commission.

(7) Subsection (6) does not apply to the extent that the Tribunal decides, applying the principles applicable on an application for judicial review, that the determination of the Competition Commission is a determination that would fall to be set aside on such an application.

(8) Section 117 of the Enterprise Act 2002 (c 40) (offences of supplying false or misleading information) shall have effect in relation to information supplied to the Competition Commission in connection with their functions under this section as it has effect in relation to information supplied to them in connection with their functions under Part 3 of that Act.

(9) For the purposes of this section an appeal relates to price control if the matters to which the appeal relates are or include price control matters.

(10) In this section "price control matter" means a matter relating to the imposition of any form of price control by an SMP condition the setting of which is authorised by--

- (a) section 87(9);
- (b) section 91; or
- (c) section 93(3).

194 Composition of Competition Commission for price control references

(1) The Secretary of State must appoint not less than three members of the Competition Commission for the purposes of references under section 193.

(2) In selecting a group to perform the Commission's functions in relation to a reference under section 193, the chairman of the Commission must select at least one, and not more than three, of the members appointed under this section to be members of the group.

195 Decisions of the Tribunal

- (1) The Tribunal shall dispose of an appeal under section 192(2) in accordance with this section.
- (2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal's decision must include a decision as to what (if any) is the appropriate action for the decision-maker to take in relation to the subject-matter of the decision under appeal.
- (4) The Tribunal shall then remit the decision under appeal to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.
- (5) The Tribunal must not direct the decision-maker to take any action which he would not otherwise have power to take in relation to the decision under appeal.
- (6) It shall be the duty of the decision-maker to comply with every direction given under subsection (4).
- (7) In the case of an appeal against a decision given effect to by a restriction or condition set by regulations under section 109, the Tribunal must take only such steps for disposing of the appeal as it considers are not detrimental to good administration.
- (8) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (c 40) (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if for the reference to the undertaking to which commercial information relates there were substituted a reference to any person to whom it relates.
- (9) In this section "the decision-maker" means--
 - (a) OFCOM or the Secretary of State, according to who took the decision appealed against; or
 - (b) in the case of an appeal against--
 - (i) a direction, approval or consent given by a person other than OFCOM or the Secretary of State, or
 - (ii) the modification or withdrawal by such a person of such a direction, approval or consent,

that other person.

196 Appeals from the Tribunal

- (1) A decision of the Tribunal on an appeal under section 192(2) may itself be appealed.
- (2) An appeal under this section--
 - (a) lies to the Court of Appeal or to the Court of Session; and
 - (b) must relate only to a point of law arising from the decision of the Tribunal.
- (3) An appeal under this section may be brought by--
 - (a) a party to the proceedings before the Tribunal; or
 - (b) any other person who has a sufficient interest in the matter.

- (4) An appeal under this section requires the permission of the Tribunal or of the court to which it is to be made.
- (5) In this section references to a decision of the Tribunal include references to a direction given by it under section 195(4).

Interpretation of Chapter 3

197 Interpretation of Chapter 3

- (1) In this Chapter--
 - "network access" has the same meaning as in Chapter 1 of this Part;
 - "the Tribunal" means the Competition Appeal Tribunal; and
 - "Tribunal rules" means rules made under section 15 of the Enterprise Act 2002.
- (2) References in this Chapter, in relation to a dispute, to the regulatory authorities of other member States are references to such of the authorities of the other member States as have been notified under the Framework Directive to the European Commission as the regulatory authorities of those States for the purposes of the matters to which the dispute relates.
- (3) In this section "the Framework Directive" has the same meaning as in Chapter 1 of this Part.

Part 6

Miscellaneous and Supplemental

Annual report

390 Annual report on the Secretary of State's functions

- (1) The Secretary of State must prepare and lay before Parliament regular reports on the carrying out by him of the functions to which this section applies.
- (2) This section applies to the Secretary of State's functions under the following enactments--
 - (a) this Act;
 - (b) the Office of Communications Act 2002 (c 11);
 - (c) the enactments relating to the management of the radio spectrum so far as not comprised in this Act;
 - (d) the 1990 Act;
 - (e) the 1996 Act.
- (3) The first report under this section must relate to the period which--
 - (a) begins with 19th March 2002 (the date of the passing of the Office of Communications Act 2002);
 - and

- (b) ends with the period of twelve months beginning with the first date to be appointed for the purposes of section 2 of this Act.
- (4) Every subsequent report must relate to the period of twelve months beginning with the end of the period to which the previous report related.
- (5) The obligation under this section to prepare and lay a report before Parliament is an obligation to do that as soon as reasonably practicable after the end of the period to which the report relates.
- (6) Where a report for the purposes of this section relates to a period the whole or a part of which falls before the time when the whole of this Act is in force, the functions referred to in subsection (2) are to be taken as excluding all functions under the specified enactments that will have ceased to be functions of the Secretary of State when the whole of this Act is in force.

Review of media ownership

391 Review of media ownership

- (1) It shall be the duty of OFCOM--
- (a) to carry out regular reviews of the operation, taken together, of all the provisions to which this section applies; and
 - (b) to send a report on every such review to the Secretary of State.
- (2) This section applies to--
- (a) the provisions of Schedule 2 to the 1990 Act;
 - (b) the provision made by or under Schedule 14 to this Act;
 - (c) the provisions of sections 280 and 281 of this Act;
 - (d) whatever provision (if any) has been made under section 283 of this Act; and
 - (e) the provisions of Part 3 of the Enterprise Act 2002 (c 40) so far as they relate to intervention by the Secretary of State in connection with newspapers or other media enterprises.
- (3) The first review must be carried out no more than three years after the commencement of this section, and subsequent reviews must be carried out at intervals of no more than three years.
- (4) The report to the Secretary of State on a review must set out OFCOM's recommendations, in consequence of their conclusions on the review, for the exercise by the Secretary of State of--
- (a) his power to make an order under section 348(5);
 - (b) his powers to make orders under Schedule 14;
 - (c) his powers under sections 282 and 283; and
 - (d) his powers under sections 44(11), 58(3) and 59(6A) of the Enterprise Act 2002 (media mergers).
- (5) OFCOM must publish every report sent by them to the Secretary of State under this section in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

Guidelines as to penalties

392 Penalties imposed by OFCOM

- (1) It shall be the duty of OFCOM to prepare and publish a statement containing the guidelines they propose to follow in determining the amount of penalties imposed by them under provisions contained in this Act or any other enactment apart from the Competition Act 1998 (c 41).
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement under this section, they must publish the statement or (as the case may be) the revised statement 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 it.
- (4) Before publishing a statement or revised statement under this section OFCOM must consult both--
 - (a) the Secretary of State, and
 - (b) such other persons as they consider appropriate,

about the guidelines they are proposing to include in the statement.

- (5) Before determining how to publish a statement or revised statement under this section OFCOM must consult the Secretary of State.
- (6) It shall be the duty of OFCOM, in determining the amount of any penalty to be imposed by them under this Act or any other enactment (apart from the Competition Act 1998 (c 41)) to have regard to the guidelines contained in the statement for the time being in force under this section.
- (7) References in this section to penalties imposed by OFCOM under provisions contained in this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).

Disclosure of information

393 General restrictions on disclosure of information

- (1) Subject to the following provisions of this section, information with respect to a particular business which has been obtained in exercise of a power conferred by--
 - (a) this Act,
 - (b) . . .
 - (c) the 1990 Act, or
 - (d) the 1996 Act,

is not, so long as that business continues to be carried on, to be disclosed without the consent of the person for the time being carrying on that business.

- (2) Subsection (1) does not apply to any disclosure of information which is made--
 - (a) for the purpose of facilitating the carrying out by OFCOM of any of their functions;
 - (b) for the purpose of facilitating the carrying out by any relevant person of any relevant function;
 - (c) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions;
 - (d) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c 24) (criminal proceedings and investigations);

- (e) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments or instruments mentioned in subsection (5); or
 - (f) for the purpose of securing compliance with an international obligation of the United Kingdom.
- (3) Each of the following is a relevant person for the purposes of this section--
- (a) a Minister of the Crown and the Treasury;
 - (b) the Scottish Executive;
 - (c) a Northern Ireland department;
 - (d) the Office of Fair Trading;
 - (e) the Competition Commission;
 - (f) the Consumer Panel;
 - (g) the Welsh Authority;
 - (h) a local weights and measures authority in Great Britain;
 - (i) any other person specified for the purposes of this subsection in an order made by the Secretary of State.
- (4) The following are relevant functions for the purposes of this section--
- (a) any function conferred by or under this Act;
 - (b) any function conferred by or under any enactment or instrument mentioned in subsection (5);
 - (c) any other function specified for the purposes of this subsection in an order made by the Secretary of State.
- (5) The enactments and instruments referred to in subsections (2) and (4) are--
- (a) . . .
 - (b) . . .
 - (c) the Wireless Telegraphy Act 1967 (c 72);
 - (d) the Trade Descriptions Act 1968 (c 29);
 - (e) the Fair Trading Act 1973 (c 41);
 - (f) the Consumer Credit Act 1974 (c 39);
 - (g) the Competition Act 1980 (c 21);
 - (h) the Telecommunications Act 1984 (c 12);
 - (i) the Consumer Protection Act 1987 (c 43);
 - (j) the 1990 Act;
 - (k) the 1996 Act;
 - (l) . . .
 - (m) the Competition Act 1998 (c 41);
 - (n) the Enterprise Act 2002 (c 40);
 - (na) the Wireless Telegraphy Act 2006;

- (o) the Consumer Protection (Northern Ireland) Order 1987 (SI 1987/2049 (NI 20));
 - (p) the Business Protection from Misleading Marketing Regulations 2008;
 - (q) the Consumer Protection from Unfair Trading Regulations 2008.
- (6) Nothing in this section--
- (a) limits the matters that may be published under section 15, 26 or 390;
 - (aa) limits the information that may be made available under section 76A;
 - (b) limits the matters that may be included in, or made public as part of, a report made by OFCOM by virtue of a provision of this Act or the Office of Communications Act 2002 (c 11);
 - (c) prevents the disclosure of anything for the purposes of a report of legal proceedings in which it has been publicly disclosed;
 - (d) applies to information that has been published, ~~or~~ made public or made available as mentioned in paragraphs (a) to (c).
- (7) Nothing in this section applies to information obtained in exercise of the powers conferred by section 196 of the 1990 Act (powers of entry and search).
- (8) Information obtained by OFCOM in exercise of functions which are exercisable by them concurrently with the Office of Fair Trading under Part 1 of the Competition Act 1998 is subject to Part 9 of the Enterprise Act 2002, and not to the preceding provisions of this section.
- (9) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c 24) (restriction on disclosure of information for overseas purposes) shall have effect in relation to a disclosure by virtue of subsection (2)(d) as it applies in relation to a disclosure in exercise of a power to which section 17 of that Act applies.
- (10) A person who discloses information in contravention of this section is guilty of an offence and shall be liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (11) No order is to be made containing provision authorised by subsection (3) or (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (12) In this section "legal proceedings" means civil or criminal proceedings in or before any court, or proceedings before any tribunal established by or under any enactment.

Notifications etc and electronic working

394 Service of notifications and other documents

- (1) This section applies where provision made (in whatever terms) by or under an enactment specified in subsection (2) authorises or requires--
- (a) a notification to be given to any person; or
 - (b) a document of any other description (including a copy of a document) to be sent to any person.
- (2) Those enactments are--

- (a) this Act;
 - (b) the Office of Communications Act 2002 (c 11);
 - (c) . . .
 - (d) Schedule 2 to the Telecommunications Act 1984 (c 12);
 - (e) the 1990 Act; and
 - (f) the 1996 Act.
- (3) The notification or document may be given or sent to the person in question--
- (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it by post to him at that address.
- (4) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (5) The notification or document may be given or sent to a firm by being given or sent to--
- (a) a partner in the firm; or
 - (b) a person having the control or management of the partnership business.
- (6) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (7) For the purposes of this section and section 7 of the Interpretation Act 1978 (c 30) (service of documents by post) in its application to this section, the proper address of a person is--
- (a) in the case of body corporate, the address of the registered or principal office of the body;
 - (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
 - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (4) to (6), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
 - (d) in any other case, the last known address of the person in question.
- (8) In the case of--
- (a) a company registered outside the United Kingdom,
 - (b) a firm carrying on business outside the United Kingdom, or
 - (c) an unincorporated body or association with offices outside the United Kingdom,

the references in subsection (7) to its principal office include references to its principal office within the United Kingdom (if any).

- (9) In this section--
- "document" includes anything in writing; and
 - "notification" includes notice;

and references in this section to giving or sending a notification or other document to a person include references to transmitting it to him and to serving it on him.

(10) This section has effect subject to section 395.

395 Notifications and documents in electronic form

(1) This section applies where--

(a) section 394 authorises the giving or sending of a notification or other document by its delivery to a particular person ("the recipient"); and

(b) the notification or other document is transmitted to the recipient--

(i) by means of an electronic communications network; or

(ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of the enactments specified in section 394(2) as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.

(3) Where the recipient is OFCOM--

(a) they must have indicated their willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);

(b) the transmission must be made in such manner and satisfy such other conditions as they may require; and

(c) the notification or other document must take such form as they may require.

(4) Where the person making the transmission is OFCOM, they may (subject to subsection (5)) determine--

(a) the manner in which the transmission is made; and

(b) the form in which the notification or other document is transmitted.

(5) Where the recipient is a person other than OFCOM--

(a) the recipient, or

(b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.

(6) An indication to any person for the purposes of subsection (5)--

(a) must be given to that person in such manner as he may require;

(b) may be a general indication or one that is limited to notifications or documents of a particular description;

(c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and

(d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

(6A) Subsections (5) and (6) do not apply in relation to a notification or other document given by OFCOM under Part 1 or Chapter 1 of Part 2 to the European Commission, BEREC or the regulatory authorities of member States (within the meaning of that Chapter).

(7) An indication, requirement or determination given, imposed or made by OFCOM for the purposes of this section is to be given, imposed or made by being published 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 it.

(8) Subsection (9) of section 394 applies for the purposes of this section as it applies for the purposes of that section.

396 Timing and location of things done electronically

(1) The Secretary of State may by order make provision specifying, for the purposes of the enactments specified in section 394(2), the manner of determining--

- (a) the times at which things done under those enactments by means of electronic communications networks are done; and
- (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.

(2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.

(3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings--

- (a) that something done by means of an electronic communications network satisfies the requirements of the enactments specified in section 394(2) for the doing of that thing; and
- (b) the matters mentioned in subsection (1)(a) and (b).

(4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

Other miscellaneous provisions

397 Purchase of Duchy of Lancaster land

(1) The Chancellor and Council of the Duchy of Lancaster may, if they think fit, agree with a person who provides a public electronic communications network for the sale, and absolutely make sale, for such sum of money as appears to them sufficient consideration for the same, of any land which--

- (a) belongs to Her Majesty in right of the Duchy of Lancaster; and
- (b) is land which that person seeks to acquire for, or in connection with, the provision of his network.

(2) In this section "public electronic communications network" has the same meaning as in Chapter 1 of Part 2.

398 Repeal of certain provisions of the Telecommunications Act 1984

- (1) The Telecommunications Act 1984 (c 12) shall be amended as follows.
- (2) In Part 5 (transfer of undertakings of British Telecommunications), the following provisions (which include spent provisions) shall cease to have effect--
- (a) section 60;
 - (b) section 61(1) to (6);
 - (c) section 62;
 - (d) section 63(1) to (4);
 - (e) sections 64 to 67;
 - (f) section 69 to 71;
 - (g) sections 72(2), (4) and (5); and
 - (h) section 73.
- (3) In section 68(2) (liability of Secretary of State on winding up), after "any outstanding liability of the successor company" there shall be inserted "for the payment of pensions".
- (4) In Part 7 (miscellaneous and supplemental) the following provisions shall cease to have effect--
- (a) section 93 (grants to promote interests of disabled persons); and
 - (b) section 97 (contributions by local authorities towards the provision of telecommunications facilities).

Supplemental

399 Expenses

There shall be paid out of money provided by Parliament--

- (a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of any of his functions under this Act; and
- (b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.

400 Destination of licence fees and penalties

- (1) This section applies (subject to section 401) to the following amounts--
- (a) an amount paid to OFCOM in respect of a penalty imposed by them under Chapter 1 of Part 2 (including a penalty imposed by virtue of section 191(5));
 - (b) so much of an amount paid to OFCOM under numbering conditions in respect of an allocation of telephone numbers as is an amount determined by reference to an indication given in response to an invitation such as is mentioned in section 58(5)(a);
 - (c) an amount paid to OFCOM in pursuance of an obligation imposed by or under Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006;

- (d) an amount paid to OFCOM in respect of a penalty imposed by them under section 42 or 43A of that Act;
 - (e) a cash bid amount paid to OFCOM under a Broadcasting Act licence for the first year falling within the period for which the licence is in force;
 - (f) an amount paid to OFCOM under such a licence for a subsequent year as the amount equal to a cash bid amount increased by the appropriate percentage;
 - (g) an amount paid to OFCOM under such a licence as an amount representing a percentage of relevant revenue for an accounting period;
 - (h) an amount paid to OFCOM in respect of a penalty imposed by them under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or Part 3 of this Act.
- (2) Where OFCOM receive an amount to which this section applies, it must be paid into the appropriate Consolidated Fund; but this subsection does not apply to an amount which is required by OFCOM for making an adjustment in respect of an overpayment.
- (3) The reference in subsection (2) to the payment of an amount into the appropriate Consolidated Fund--
- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
 - (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
 - (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.
- (4) OFCOM must, in respect of each financial year, prepare an account showing--
- (a) the amounts to which this section applies that have been received by them during that year;
 - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under this section in respect of those amounts;
 - (c) the aggregate amount of the sums received by them during that year that is retained in accordance with a statement of principles under section 401 for meeting the costs of carrying out functions mentioned in subsection (4) of that section during that year;
 - (d) the aggregate amount that they estimate will fall to be so retained out of amounts due to them and likely to be paid or recovered; and
 - (e) the cost to OFCOM of carrying out during that year the functions in respect of which amounts are or are to be retained in accordance with such a statement.
- (5) OFCOM must send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates.
- (6) The Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.
- (7) References in this section to penalties imposed by OFCOM under Part 3 of this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).
- (8) In this section--

"the appropriate percentage" has the same meaning as in section 19 of the 1990 Act;

"cash bid amount" means an amount specified in a cash bid for a Broadcasting Act licence or the amount determined by OFCOM for the purposes of any provision of the 1990 Act or this Part to be what would have been the amount of a cash bid for a licence;

"financial year" has the same meaning as in the Schedule to the Office of Communications Act 2002 (c 11);

"numbering conditions" means conditions the setting of which is authorised by section 58 or 59; and

"relevant revenue" means any of the following--

- (a) the amount which for the purposes of section 19, 52(1), 102(1) or 118 (1) of the 1990 Act is the amount of qualifying revenue for an accounting period;
- (b) the amount which for the purposes of section 13(1) or 55(1) of the 1996 Act is the amount of multiplex revenue for an accounting period; or
- (c) an amount which for the purposes of paragraph 7 of Schedule 10 to this Act is the amount of qualifying revenue for an accounting period.

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

(1) OFCOM have power to make a statement of the principles under which they may retain any or all of the amounts paid to them in pursuance of obligations imposed by or under Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006.

(2) Where such a statement of principles authorises the retention of an amount, OFCOM are not required to pay it into the appropriate Consolidated Fund in accordance with section 400.

(3) Principles contained in a statement made by OFCOM under this section must be such as appear to them to be likely to secure, on the basis of such estimates of the likely costs as it is practicable to make--

- (a) that, on a year by year basis, the aggregate amount of the amounts retained by OFCOM does not exceed the amount required by OFCOM for meeting the annual cost to OFCOM of carrying out the functions mentioned in subsection (4);
- (b) that the amounts retained by OFCOM are objectively justifiable and proportionate to the costs in respect of which they are retained; and
- (c) that the relationship between meeting the cost of carrying out those functions and the amounts retained is transparent.

(4) Those functions are--

- (a) OFCOM's functions under the enactments relating to the management of the radio spectrum except those specified in subsection (5); and
- (b) the function of taking any steps that OFCOM consider it necessary to take--
 - (i) in preparation for the carrying out of any of the functions mentioned in paragraph (a) of this subsection; or
 - (ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.

(5) The excepted functions of OFCOM are--

- (a) their functions under section 22(2);

- (b) their functions under section 1(1) and (2) of the Wireless Telegraphy Act 2006 so far as carried out in relation to the use of the electromagnetic spectrum at places outside the United Kingdom, and their functions under section 1(5);
 - (c) their functions under section 4 of that Act;
 - (d) their functions under section 7 of that Act;
 - (e) their functions under section 30 of that Act;
 - (f) their functions under sections 42 to 44 of that Act;
 - (g) any functions conferred on them under sections 47 to 49 of that Act; and]
 - (h) any function not falling within the preceding paragraphs in so far as the costs of carrying it out are met from payments made to OFCOM by virtue of section 28 of this Act or section 1(8) of the Wireless Telegraphy Act 2006.
- (6) A statement under this section may include provision which, for the purposes of the principles contained in the statement and of the preparation of accounts in accordance with section 400(4), requires an amount actually received in one year--
- (a) to be treated as referable to costs incurred in that year and in one or more subsequent years; and
 - (b) to be brought into account, in each of those years, in accordance with an apportionment for which provision is made in the statement.
- (7) A deficit or surplus shown (after applying this subsection for all previous years) by an account prepared under section 400(4) is to be carried forward and taken into account in determining what is required by OFCOM in relation to the following year for meeting the costs of carrying out the functions mentioned in subsection (4) of this section.
- (8) A statement of principles under this section--
- (a) if it is expressed to apply for a limited period, does not apply to any amounts paid to OFCOM after the end of that period; and
 - (b) in any event, does not apply to amounts paid to them after a withdrawal of the statement takes effect.
- (9) OFCOM may revise a statement made under this section.
- (10) The consent of the Treasury is required for the making, revision or withdrawal of a statement under this section.
- (11) Where OFCOM make or revise a statement of this section they must publish so much of the statement or revised statement as appears to them necessary for demonstrating that the statement or revision complies with subsection (3).

402 Power of Secretary of State to make orders and regulations

- (1) Every power conferred by section 124P and this Act on the Secretary of State to make orders or regulations, other than the powers conferred by Schedule 4, is a power exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations made in exercise of any such power, other than--
 - (a) an order under section 31 or 411,

(b) . . . or

(c) any order that is required, by any provision of this Act, to be laid before Parliament and approved in draft,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Every power of the Secretary of State to make an order or regulations under this Act, other than an order under section 31 or 411 or an order made in exercise of a power conferred by Schedule 4, includes power--

(a) to make different provision for different cases (including different provision in respect of different areas);

(b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and

(c) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

403 Regulations and orders made by OFCOM

(1) This section applies to any power of OFCOM to make regulations or to make an order or scheme if that power is one to which this section is expressly applied.

(2) The powers to which this section applies shall be exercisable by statutory instrument, and the Statutory Instruments Act 1946 (c 36) is to apply in relation to those powers as if OFCOM were a Minister of the Crown.

(3) Where an instrument made under a power to which this section applies falls to be laid before Parliament, OFCOM must, immediately after it is made, send it to the Secretary of State for laying by him.

(4) Before making any regulations or order under a power to which this section applies, OFCOM must--

(a) give a notice of their proposal to do so to such persons representative of the persons appearing to OFCOM to be likely to be affected by the implementation of the proposal as OFCOM think fit;

(b) publish notice of their proposal 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 it and are not given notice by virtue of paragraph (a); and

(c) consider any representations that are made to OFCOM, before the time specified in the notice.

(5) A notice for the purposes of subsection (4) must--

(a) state that OFCOM propose to make the regulations or order in question;

(b) set out the general effect of the regulations or order;

(c) specify an address from which a copy of the proposed regulations or order may be obtained; and

(d) specify a time before which any representations with respect to the proposal must be made to OFCOM.

(6) The time specified for the purposes of subsection (5)(d) must be no earlier than the end of the period of one month beginning with the day after the latest day on which the notice is given or published for the purposes of subsection (4).

(7) Every power of OFCOM to which this section applies includes power--

- (a) to make different provision for different cases (including different provision in respect of different areas);
- (b) to make provision subject to such exemptions and exceptions as OFCOM think fit; and
- (c) to make such incidental, supplemental, consequential and transitional provision as OFCOM think fit.

(8) The Documentary Evidence Act 1868 (c 37) (proof of orders and regulations etc) shall have effect as if--

- (a) OFCOM were included in the first column of the Schedule to that Act;
- (b) OFCOM and persons authorised to act on their behalf were mentioned in the second column of that Schedule.

404 Criminal liability of company directors etc

(1) Where an offence under any enactment to which this section applies is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of--

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity,

he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where an offence under any enactment to which this section applies--

- (a) is committed by a Scottish firm, and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a partner of the firm,

he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) In this section "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) The enactments to which this section applies are every enactment contained in--

- (a) this Act;
- (b) . . .
- (c) . . .
- (d) the Wireless Telegraphy Act 1967 (c 72); or
- (e) the Telecommunications Act 1984 (c 12).

(5) . . .

405 General interpretation

(1) In this Act, except in so far as the context otherwise requires--

"the 1990 Act" means the Broadcasting Act 1990 (c 42);

"the 1996 Act" means the Broadcasting Act 1996 (c 55);

"access" is to be construed in accordance with subsection (4);

"apparatus" includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;

"associated facility" has the meaning given by section 32;

"the Audiovisual Media Services Directive" means Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;

"the BBC" means the British Broadcasting Corporation;

"BEREC" means the Body of European Regulators for Electronic Communications;

"body" (without more) means any body or association of persons, whether corporate or unincorporate, including a firm;

"broadcast" means broadcast by wireless telegraphy, and cognate expressions are to be construed accordingly;

"Broadcasting Act licence" means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of the 1996 Act;

"business" includes any trade or profession;

"C4C" means the Channel Four Television Corporation;

"communications provider" means a person who (within the meaning of section 32(4)) provides an electronic communications network or an electronic communications service;

"the Consumer Panel" means the panel established under section 16;

"consumers" has the meaning given by subsection (5);

"Content Board" means the committee of OFCOM established and maintained under section 12;

"contravention" includes a failure to comply, and cognate expressions are to be construed accordingly;

"customers", in relation to a communications provider or a person who makes an associated facility available, means the following (including any of them whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business)--

- (a) the persons to whom the network, service or facility is provided or made available in the course of any business carried on as such by the provider or person who makes it available;
- (b) the persons to whom the communications provider or person making the facility available is seeking to secure that the network, service or facility is so provided or made available;
- (c) the persons who wish to be so provided with the network or service, or to have the facility so made available, or who are likely to seek to become persons to whom the network, service or facility is so provided or made available;

"distribute", in relation to a service, does not include broadcast, and cognate expressions shall be construed accordingly;

"electronic communications network" and "electronic communications service" have the meanings given by section 32;

"enactment" includes any enactment comprised in an Act of the Scottish Parliament or in any Northern Ireland legislation;

"the enactments relating to the management of the radio spectrum" means--

- (a) the Wireless Telegraphy Act 2006; and
- (g) the provisions of this Act so far as relating to that Act;

"frequency" includes frequency band;

"holder", in relation to a Broadcasting Act licence, is to be construed in accordance with subsection (7), and cognate expressions are to be construed accordingly;

"information" includes accounts, estimates and projections and any document;

"intelligible" is to be construed in accordance with subsection (9);

"international obligation of the United Kingdom" includes any Community obligation and any obligation which will or may arise under any international agreement or arrangements to which the United Kingdom is a party;

"modification" includes omissions, alterations and additions, and cognate expressions are to be construed accordingly;

"OFCOM" means the Office of Communications;

"on-demand programme service" has the meaning given by section 368A(1);

"other member State" means a member State other than the United Kingdom;

"pre-commencement regulator" means any of the following--

- (a) the Broadcasting Standards Commission;
- (b) the Director General of Telecommunications;
- (c) the Independent Television Commission;
- (d) the Radio Authority;

"programme" includes an advertisement and, in relation to a service, anything included in that service;

"programme service" means--

- (a) a television programme service;
- (b) the public teletext service;
- (c) an additional television service;
- (d) a digital additional television service;
- (e) a radio programme service; or
- (f) a sound service provided by the BBC;

and expressions used in this definition and in Part 3 have the same meanings in this definition as in that Part;

"provide" and cognate expressions, in relation to an electronic communications network, electronic communications service or associated facilities, are to be construed in accordance with section 32(4);

"purposes of public service television broadcasting in the United Kingdom" shall be construed in accordance with subsection (4) of section 264 and subsections (5) and (6) of that section shall apply for the

purposes of any provision of this Act referring to such purposes as they apply for the purposes of a report under that section;

"the radio transfer date" means the date on which the Radio Authority's functions under Part 3 of the 1990 Act and Part 2 of the 1996 Act are transferred under this Act to OFCOM;

"representation", in relation to a proposal or the contents of any notice or notification, includes an objection to the proposal or (as the case may be) to the whole or any part of those contents;

"subordinate legislation" means--

- (a) any subordinate legislation, within the meaning of the Interpretation Act 1978 (c 30); or
- (b) any statutory rules (within the meaning of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12));

"television and radio services" means--

- (a) programme services apart from those provided by the BBC; and
- (b) services provided by the BBC in relation to which OFCOM have functions;

"television programme" means any programme (with or without sounds) which--

- (a) is produced wholly or partly to be seen on television; and
- (b) consists of moving or still images or of legible text or of a combination of those things;

"the television transfer date" means the date on which the Independent Television Commission's functions under Part 1 of the 1990 Act and Part 1 of the 1996 Act are transferred under this Act to OFCOM;

"TV licence" means a licence for the purposes of section 363;

"the Welsh Authority" means the authority whose name is, by virtue of section 56(1) of the 1990 Act, Sianel Pedwar Cymru;

"wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act 2006;

"wireless telegraphy licence" means a licence granted under section 8 of the Wireless Telegraphy Act 2006.

(2) Any power under this Act to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.

(3) References in this Act to OFCOM's functions under an enactment include references to their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.

(4) References in this Act to access--

- (a) in relation to an electronic communications network or electronic communications service, are references to the opportunity of making use of the network or service; and
- (b) in relation to a programme service, are references to the opportunity of viewing in an intelligible form the programmes included in the service or (as the case may be) of listening to them in such a form.

(5) For the purposes of this Act persons are consumers in a market for a service, facility or apparatus, if they are--

- (a) persons to whom the service, facility or apparatus is provided, made available or supplied (whether in their personal capacity or for the purposes of, or in connection with, their businesses);
 - (b) persons for whose benefit the service, facility or apparatus is provided, made available or supplied or for whose benefit persons falling within paragraph (a) arrange for it to be provided, made available or supplied;
 - (c) persons whom the person providing the service or making the facility available, or the supplier of the apparatus, is seeking to make into persons falling within paragraph (a) or (b); or
 - (d) persons who wish to become persons falling within paragraph (a) or (b) or who are likely to seek to become persons falling within one or both of those paragraphs.
- (6) References in this Act to services in relation to which OFCOM have functions include references to any services in relation to which OFCOM are required to set standards under section 319.
- (7) In this Act references, in relation to a time or a period, to the holder of a Broadcasting Act licence or of a particular description of such licence are references to the person who held that licence at that time or (as the case may be) to every person who held that licence for the whole or a part of that period.
- (8) For the purposes of this Act the fact that a service is not in an intelligible form shall be disregarded, except where express provision is made to the contrary, in determining whether it has been provided--
- (a) for general reception;
 - (b) for reception by particular persons; or
 - (c) for reception at a particular place or in a particular area.
- (9) For the purposes of this Act something is not to be regarded as in an intelligible form if it cannot readily be understood without being decrypted or having some comparable process applied to it.

406 Minor and consequential amendments, transitionals and repeals

- (1) Schedule 17 (which provides for minor and consequential amendments in connection with the other provision made by this Act) shall have effect.
- (2) The Secretary of State may by order make such consequential modifications of any enactment as--
- (a) correspond to amendments of any other enactment that are made by Schedule 17; and
 - (b) appear to him to be appropriate in consequence of that provision of this Act.
- (3) The Secretary of State may by order make any provision that he thinks fit for substituting a reference in any enactment or subordinate legislation to something defined for the purposes of this Act, or of any provisions contained in this Act, for a reference to something equivalent or similar that was defined for the purposes of the Telecommunications Act 1984 (c 12), or of provisions contained in that Act.
- (4) The Secretary of State may by order make such further consequential modifications of--
- (a) an enactment extending only to Scotland,
 - (b) an enactment extending only to Northern Ireland,
 - (c) a local enactment, or
 - (d) the provision of any subordinate legislation,

as appear to him to be appropriate in consequence of any provision of this Act.

(5) If it appears to the Secretary of State that a local enactment contains a provision which corresponds to a provision the effect of which is modified by an amendment in Schedule 17 of this Act of a listed provision, it shall be his duty to exercise his powers under this section to secure that a modification corresponding to that effected by that amendment is made to the local enactment.

(6) Schedule 18 (which contains transitional provisions in connection with the other provision made by this Act) shall have effect.

(7) Subject to the provisions of Schedule 18 and to the savings and commencement provisions set out in the notes to Schedule 19, the enactments and instruments specified in Schedule 19 (which include provisions that are spent or have ceased to be of any practical utility) are hereby repealed or revoked to the extent specified in the second column of that Schedule.

(8) In this section "local enactment" means--

- (a) a local or personal Act;
- (b) a public general Act relating only to London;
- (c) an order or scheme made under an Act which has been confirmed by Parliament or brought into operation in accordance with special Parliamentary procedure;
- (d) an enactment in a public general Act but amending a local enactment.

(9) In subsection (5) "listed provision" means the provisions of the following enactments--

- (a) sections 11 and 14 of the London Overground Wires, etc Act 1933 (c xlv);
- (b) section 7(6) of the London County Council (General Powers) Act 1949 (c lv);
- (c) section 17(2) of the Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955 (c 15 (NI));
- (d) section 17(4)(a) of the London County Council (General Powers) Act 1963 (c xvii);
- (e) section 7(6) of the Greater London Council (General Powers) Act 1969 (c lii);
- (f) section 20(1)(a) of the Thames Barrier and Flood Prevention Act 1972 (c xlv);
- (g) section 32 of and paragraph 3(2)(b) of Schedule 2 and Part 10 of Schedule 7 to the Channel Tunnel Act 1987 (c 53);
- (h) section 25(1) of the Norfolk and Suffolk Broads Act 1988 (c 4);
- (i) section 5 of the London Local Authorities (No 2) Act 1990 (c xxx);
- (j) paragraphs 1(c) and 16 of Schedule 2, paragraph 3(2)(c) of Schedule 4 and paragraph 21 of Schedule 7 to the Cardiff Bay Barrage Act 1993 (c 42);
- (k) section 3(1) of the British Waterways Act 1995 (c i);
- (l) paragraphs 6(4) and 15(4) of Schedule 6 and Part 4 of Schedule 15 to the Channel Tunnel Rail Link Act 1996 (c 61).

(10) This section has effect subject to section 408.

407 Pre-consolidation amendments

(1) The Secretary of State may by order make such modifications of--

- (a) ...

- (b) the enactments relating to broadcasting, and
- (c) enactments referring to enactments falling within paragraph . . . (b),

as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of those enactments or any of them.

- (2) No order is to be made under this section unless a Bill for repealing and re-enacting--
 - (a) the enactments modified by the order, or
 - (b) enactments relating to matters connected with the matters to which enactments modified by the order relate,

has been presented to either House of Parliament.

- (3) An order under this section is not to come into force until immediately before the commencement of the Act resulting from that Bill.

- (4) 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.

- (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.

408 Transitional provision for anticipatory carrying out of functions

- (1) This section applies where an order under section 411 bringing into force--
 - (a) a provision of Part 1, 2 or 6, or
 - (b) a provision of Chapter 1 of Part 5,

states that that provision is brought into force at a particular time for the purpose only of enabling specified networks and services functions, or specified spectrum functions, to be carried out during the transitional period by the Director General of Telecommunications or the Secretary of State.

- (2) In relation to times falling in the transitional period, that provision is to have effect as if--
 - (a) references in that provision to OFCOM, and
 - (b) references to OFCOM inserted by that provision in any other enactment,

were references, in accordance with subsection (3), to the Director General of Telecommunications or to the Secretary of State.

- (3) The references have effect--
 - (a) as references to the Director General of Telecommunications to the extent that the provision is brought into force for the purpose of enabling specified networks and services functions to be carried out; and

(b) as references to the Secretary of State, to the extent that the provision is brought into force for the purpose of enabling specified spectrum functions to be carried out.

(4) An order bringing a provision into force as mentioned in subsection (1) may include provision specifying the extent to which it is to be taken, for the purposes of subsection (3), to have been brought into force for the purpose of enabling particular functions to be carried out.

(5) In relation to times after the end of the transitional period for a provision which has been brought into force for enabling specified functions to be carried out by the Director General of Telecommunications or the Secretary of State, anything which--

- (a) was done, during that period, by or in relation to that Director or the Secretary of State, and
- (b) was so done for the purposes of, or in connection with, the carrying out of those functions,

is to have effect as if had been done by or in relation to OFCOM.

(6) In this section "the transitional period", in relation to a provision brought into force as mentioned in subsection (1) by an order under section 411, means the period which--

- (a) begins with the time when it is so brought into force; and
- (b) ends with the time from which that order, or a subsequent order under that section, brings the provision into force for the purpose of conferring on OFCOM the functions in question.

(7) In this section "networks and services functions" means any of the following functions of OFCOM under this Act--

- (a) their functions under sections 24 and 25;
- (b) their functions under Chapter 1 of Part 2;
- (c) their functions under Chapter 3 of Part 2, except to the extent that those functions relate to--
 - (i) disputes relating to rights or obligations conferred or imposed by or under the enactments relating to the management of the radio spectrum; or
 - (ii) decisions made under those enactments;
- (d) their functions under Chapter 1 of Part 5, except to the extent that those functions relate to broadcasting or related matters;
- (e) their functions under Schedule 18 to this Act in relation to the abolition of licensing (within the meaning of that Schedule).

(8) In this section "spectrum functions" means--

- (a) the functions under the enactments relating to the management of the radio spectrum which by virtue of this Act are conferred on OFCOM; and
- (b) the functions conferred on OFCOM by so much of Chapter 3 of Part 2 as relates to the disputes and decisions mentioned in subsection (7)(c).

409 Modifications consequential on regulations implementing Directives

- (1) This section applies if it appears to the Secretary of State that regulations under section 2 of the European Communities Act 1972 (c 68) for giving effect to Community obligations imposed by the Communications Directives have come into force before the passing of this Act.
- (2) The Secretary of State may by order--
- (a) repeal any relevant provision of this Act which appears to him to be unnecessary, or to have become spent, in consequence of the regulations;
 - (b) make such other modifications of the relevant provisions of this Act as he considers appropriate in consequence of the regulations;
 - (c) revoke provision made by the regulations; and
 - (d) make transitory or transitional provision in relation to anything done by or under the regulations.
- (3) The Secretary of State's power under this section includes power to make consequential amendments of enactments not contained in this Act.
- (4) In this section--
- "the Communications Directives" means--
- (a) the Access Directive, that is to say, Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities;
 - (b) the Authorisation Directive, that is to say, Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services;
 - (c) the Framework Directive, that is to say, Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services;
 - (d) the Universal Service Directive, that is to say, Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services;
- "relevant provision of this Act" means a provision contained in--
- (a) Part 1, 2 or 6; or
 - (b) Chapter 1 of Part 5.
- (5) 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.

410 Application of enactments to territorial sea and other waters

- (1) This section applies to--
- (a) provision made by or under Part 2 of this Act;
 - (b) any provision of the enactments relating to the management of the radio spectrum that are not contained in that Part or the Wireless Telegraphy Act 2006; and
 - (c) any provision of Chapter 1 of Part 5 of this Act so far as it relates to a matter as respects which provision falling within paragraph (a) or (b) is made or a matter as respects which the Wireless Telegraphy Act 2006 makes provision.

- (2) Her Majesty may by Order in Council provide--
- (a) for an area of the territorial sea to be treated, for the purposes of any provision to which this section applies, as if it were situated in such part of the United Kingdom as may be specified in the Order; and
 - (b) for jurisdiction with respect to questions arising in relation to the territorial sea under any such provision to be conferred on courts in a part of the United Kingdom so specified.
- (3) An Order in Council under section 11 of the Petroleum Act 1998 (c 17) or section 87 of the Energy Act 2004 (c 20) (application of civil law to offshore installations etc) may make provision for treating--
- (a) an installation with respect to which provision is made under that section and which is outside the territorial sea but in waters to which that section applies, and
 - (b) waters within 500 metres of the installation,

as if for the purposes of provisions to which this section applies, they were situated in such part of the United Kingdom as is specified in the Order.

- (4) The jurisdiction conferred on a court by an Order in Council under this section is in addition to any jurisdiction exercisable apart from this section by that or any other court.
- (5) Subsection (3) of section 402 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if references in that subsection to the Secretary of State were references to Her Majesty in Council.
- (6) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section--
- "installation" includes any floating structure or device maintained on a station by whatever means, and installations in transit;
 - "the territorial sea" means the territorial sea adjacent to the United Kingdom.

411 Short title, commencement and extent

- (1) This Act may be cited as the Communications Act 2003.
- (2) This Act (except the provisions listed in subsection (3), which come into force on the passing of this Act) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed under this subsection for different purposes.
- (3) Those provisions are sections 31(1) to (4) and (6) and 405 and this section.
- (4) An order under subsection (2) may include provision making such transitional or transitory provision, in addition to that made by Schedule 18, as the Secretary of State considers appropriate in connection with the bringing into force of any provisions of this Act; and the power to make transitional or transitory provision includes power to make--
- (a) different provision for different cases (including different provision in respect of different areas);
 - (b) provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) such incidental, supplemental and consequential provision as he thinks fit.

(5) This Act extends to Northern Ireland.

(6) Subject to subsection (7), Her Majesty may by Order in Council extend the provisions of this Act, with such modifications as appear to Her Majesty in Council to be appropriate, to any of the Channel Islands or to the Isle of Man.

(7) Subsection (6) does not authorise the extension to any place of a provision of this Act so far as it gives effect to an amendment of an enactment that is not itself capable of being extended there in exercise of a power conferred on Her Majesty in Council.

(8) Subsection (3) of section 402 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if references in that subsection to the Secretary of State were references to Her Majesty in Council.

Conditions relating to premium rate services and conditions corresponding to SMP or access-related conditions

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(1) This paragraph applies where OFCOM give a continuation notice to the holder of a licence granted under section 7 of the 1984 Act.

(2) A continuation notice is a notice that a provision contained in a condition of the licence is to have effect, after the abolition of licensing—

(a) to the extent specified in the notice; and

(b) subject to such modifications (if any) as may be so specified.

(3) OFCOM are not to give a continuation notice except to the extent that they consider that provision to which it will give effect, as modified by the notice, (“the continued provision”)—

(a) regulates the provision of premium rate services; or

(b) falls within sub-paragraph (4).

(4) The continued provision falls within this sub-paragraph in so far as it corresponds to provision of one or more of the following descriptions—

(a) provision that OFCOM have power to include in SMP conditions;

(b) provision authorised by section 73(2) or (4) for inclusion in access-related conditions;

(c) provision relating to matters mentioned in Article 16 of the Universal Service Directive or Article 7 of the Access Directive.

(5) A continuation notice relating to provision corresponding to anything that OFCOM have power to include in SMP conditions—

(a) may identify the market by reference to which an SMP condition replacing the provision would have to be set; and

(b) in so far as the provision corresponds to anything that OFCOM have power to include only in SMP apparatus conditions, must do so.

(6) OFCOM are not to give a continuation notice relating to provision corresponding to anything that OFCOM have power to include only in SMP apparatus conditions except to the extent that it has effect in relation to the supply of electronic communications apparatus of a description supplied in the market identified in the notice as the market by reference to which SMP conditions replacing the continued provision would have to be set.

(7) The modifications for which a continuation notice may provide—

(a) must be confined to modifications for the purpose of securing that the provision to which they relate continues to have effect for so long as the notice is in force; but

(b) in the case of provision which is expressed to impose a requirement to be met before the abolition of licensing, may include a modification under which that requirement must continue to be met for so long as the notice remains in force.

(8) Notwithstanding any repeal or revocation made by this Act—

(a) the continued provision,

(b) every provision made by a direction, determination or consent given or made for the purposes of the continued provision, and

(c) so far as necessary for giving effect to anything mentioned in paragraph (a) or (b), every provision made by or under the licence under the 1984 Act that is not so mentioned,

are to remain in force for so long as the continuation notice is in force.

(9) A continuation notice shall cease to have effect if OFCOM give a notice to that effect to the holder of the licence.

(10) Where the continued provision is one that OFCOM have power to include only in an SMP apparatus condition, it shall be their duty, as soon as reasonably practicable after giving the continuation notice—

(a) to carry out an analysis of the market which, under sub-paragraph (5), is identified in that notice;

(b) to take all other steps necessary for enabling them to decide whether or not to set an SMP apparatus condition by reference to that market for the purpose of replacing the continued provision; and

(c) to decide whether or not to exercise their power to set such a condition for that purpose.

(11) In the case of every other continued provision falling within sub-paragraph (4), it shall be OFCOM's duty, as soon as reasonably practicable after giving the continuation notice—

(a) to take all steps necessary for enabling them to decide whether or not to set a condition of any other description under Chapter 1 of Part 2 of this Act for the purpose of replacing the continued provision; and

(b) to decide whether or not to exercise their power to set a condition under that Chapter for that purpose.

(12) It shall be the duty of OFCOM—

(a) as soon as reasonably practicable after making a decision required by sub-paragraph (10) or (11), but

(b) in a case where that decision is a decision to set a condition, not before the coming into force of that condition,

to give a notice under sub-paragraph (9) with respect to the continuation notice.

(13) The duties imposed by sub-paragraphs (10) to (12) apply only where OFCOM have not previously given a notice under sub-paragraph (9) with respect to the continuation notice in question.

(14) This paragraph has effect in the case of a licence granted under section 7 of the 1984 Act to persons of a particular class as if—

(a) references to the holder of that licence were references to the members of that class; and

(b) the manner in which a continuation notice or notice under sub-paragraph (9) is to be given to members of that class were by its publication in such manner as, in OFCOM's opinion, is appropriate for bringing it to the attention of the members of that class who are affected by the notice.

(14A) Sections 185 to 191 apply to a dispute relating to a provision of a kind mentioned in paragraph (4), other than a dispute relating to provision that OFCOM have power to include in SMP apparatus conditions, as they apply to disputes of a kind mentioned in subsections (1A) and (2) of section 185.

(15) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.

(16) In this paragraph “Access Directive”, “electronic communications apparatus”, “the provision of premium rate services”, “SMP condition”, “SMP apparatus condition” and “Universal Service Directive” each has the same meaning as in Chapter 1 of Part 2 of this Act.