

Communications Act 2003

Part 2

Networks, services and the radio spectrum

Keeling Schedule

Showing changes which would be effected by the Digital Economy Bill (Bill 45, ordered, by the House of Commons, to be printed 5 July 2016)

This schedule has been prepared by the Department for Culture, Media and Sport. It is intended for illustrative purposes only to assist the reader of the Bill to understand the changes to Part 2 of the Communications Act 2003 which would be made by the Bill.

Notes

When text is **repealed or omitted** – text is struck through and presented in red text.

When new text is **inserted**

- Text is surrounded with square brackets and inserted in red text

When existing text is **substituted**

- Text to be replaced is struck through and presented in red text. The text replacing it is presented straight afterwards enclosed with square brackets and also in red text

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Part 2
Networks, services and the radio spectrum

Chapter 1
Electronic communications networks and services

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 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;
- (b) give effect to EU 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;

[(da) require a communications provider to pay compensation to an end-user on failing to meet a specified standard or obligation;]

- (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; ~~and~~
- (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.

[(i) specify requirements in relation to arrangements that enable an end-user to change communications provider on request.]

(2A) Where OFCOM propose 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,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 EU 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: telephone numbers

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.

[(2A) General conditions may also require a communications provider to whom telephone numbers have been allocated—

- (a) to provide OFCOM with any information that was not required to accompany the application for allocation of the numbers when it was made but which is now required to accompany such applications;
- (b) to inform OFCOM of any changes to information that accompanied the application for allocation of the numbers or that has been provided in accordance with a condition set under paragraph (a);
- (c) to inform OFCOM of any proposal by the provider to cease to provide an electronic communications network or electronic communications service;
- (d) to inform OFCOM of any circumstances or events of a description specified in the condition.]

- (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.

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 EU 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.
- [(2A) The provision made under subsection (1) is referred to as “the universal service order”.
- (2B) The universal service order may in particular say that broadband connections and services must be provided to any extent.
- (2C) The universal service order may contain—
 - (a) guidance about matters relating to the speed or other characteristics of broadband connections or services that it says must be provided (as well as or instead of setting out any of those characteristics); and
 - (b) guidance about any other matters relating to those connections or services.]
- (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.
- [(9A) In making any regulations under this section, OFCOM must have regard to any guidance that is contained in the universal service order.]
- (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.

[72A Review of universal service order

- (1) **The Secretary of State may direct OFCOM to review and report to the Secretary of State on any provision made, or that may be made, by the universal service order in relation to broadband connections or services.**

- (2) The Secretary of State must consult OFCOM before giving a direction under this section.
- (3) The Secretary of State must publish a direction under this section.
- (4) OFCOM must publish the report made by them to the Secretary of State of a review under this section.]

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 42)~~ [the code set out in Schedule 3A].
- ~~(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 [infrastructure]** 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~~ **[system of infrastructure]**, or part of a ~~conduit system~~ **[system of infrastructure]**, 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)~~ **[81(7)]** of the code (minimum compensation).

~~(7) — In this section "conduit" includes a tunnel, subway, tube or pipe.~~

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;
 - (ba) the need to promote economic growth in the United Kingdom;
 - (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.

~~(2A) Subsection (2B) applies if—~~

~~(a) the Secretary of State has complied with subsection (2)(b) in connection with any particular exercise before 6 April 2018 of the power to make regulations under this section, and~~

~~(b) the regulations in question are expressed to cease to have effect (other than for transitional purposes) before that date.~~

[(2A) Subsection (2B) applies if the Secretary of State has complied with subsection (2)(b) in connection with any particular exercise of the power to make regulations under this section.]

(2B) The Secretary of State is to be treated as also having complied with any duty imposed in connection with that exercise of that power by any of the following—

section 11A(2) of the National Parks and Access to the Countryside Act 1949;

section 85(1) of the Countryside and Rights of Way Act 2000;

section 17A(1) of the Norfolk and Suffolk Broads Act 1988;

section 14 of the National Parks (Scotland) Act 2000 (asp 10);

Article 4(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (SI 1985/170 (N.I. 1)).

(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.

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.

[134AA Additional OFCOM reports on infrastructure etc

- (1) OFCOM may prepare reports dealing with—
 - (a) any of the electronic communications network matters listed in section 134B(1);
 - (b) any of the electronic communications services matters listed in section 134B(2).
- (2) OFCOM may publish a report 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 have an interest in it.
- (3) Before publishing a report under this section OFCOM must consider—
 - (a) whether any of the information to be contained in it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000, and
 - (b) if so, whether that information should be excluded from the report.
- (4) This section does not affect OFCOM's duty to prepare reports under section 134A.

134AB Publication of information required for purpose of preparing reports

- (1) OFCOM may publish—
 - (a) any relevant section 135 information, and
 - (b) any information derived from relevant section 135 information.
- (2) Before publishing information under this section OFCOM must consider—
 - (a) whether any of the information that they propose to publish is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000, and
 - (b) if so, whether that information should be published.
- (3) In this section “relevant section 135 information” means information required by OFCOM under section 135 for the purpose of preparing a report under section 134A or 134AA.”]

134B. Networks and services matters

- (1) For the purposes of ~~section 134A~~ [sections 134A and 134AA], 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~~ [sections 134A and 134AA], 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 [or 134AA], 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.

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.

[Comparative overviews

134D Comparative overviews of quality and prices

- (1) OFCOM may, in the interest of the end-users of public electronic communications services, carry out comparative overviews of the quality and prices of such services.
- (2) OFCOM may publish a comparative overview carried out 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 have an interest in it.]

Information provisions

135. Information required for purposes of **Chapter 4 [certain OFCOM]** 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.~~
- [(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—
- (a) section 14(1);
 - (b) section 26, so far as relating to matters in relation to which they have functions under this Chapter; or
 - (c) 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~~ [, 70 or 72A];
 - (g) identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter;
 - (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;
 - [(ica) preparing a report under section 134AA;]
 - (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) identifying 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 descriptions 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 with-in 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) [of carrying out comparative overviews under section 134D.]~~
- ~~(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 with-in 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;
 - (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.

[137A Information required from communications providers

- (1) OFCOM may require a communications provider—
 - (a) to publish any information held by the provider, or
 - (b) to provide any such information to OFCOM for publication by OFCOM.
- (2) The information that OFCOM may require the communications provider to publish or provide under subsection (1) includes information that OFCOM require the provider to produce, generate or obtain for that purpose.
- (3) For that purpose OFCOM may, in particular, require the communications provider—
 - (a) to collect or retain any information that the provider would not otherwise collect or retain,
 - (b) to process, collate or analyse any information held by the provider, or
 - (c) to answer any questions.

- (4) The power conferred by this section may be exercised only—
 - (a) in connection with OFCOM's functions—
 - (i) under Part 1, so far as relating to electronic communications, or
 - (ii) under this Chapter, and
 - (b) in such a way as is proportionate to the use to which the information is to be put in connection with those functions.
- (5) The power conferred by this section is to be exercised by a demand, contained in a notice served on the communications provider, that—
 - (a) describes the information required to be published or provided, and
 - (b) sets out OFCOM's reasons for requiring it to be published or provided.
- (6) Before serving the notice on the communications provider, OFCOM must—
 - (a) serve a draft of the notice on the provider and inform the provider of the period for making representations, and
 - (b) consider any representations made by the provider within that period which—
 - (i) identify restrictions on the disclosure or publication of information that would or might prevent the provider from complying with the notice, or
 - (ii) otherwise relate to the practicability of complying with it.
- (7) The communications provider must publish or provide the information required by the notice in such manner and form, in accordance with such other requirements, and within such reasonable period, as may be specified by OFCOM.
- (8) Where OFCOM publish anything provided to them pursuant to subsection (1)(b) they must do so in such manner and form as they consider appropriate.

137B Section 137A: confidential matters

- (1) In exercising functions under section 137A, 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 (2) and (3).

- (2) 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.
- (3) 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.]

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~~ [135, 136 or 137A], 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;
 - (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;~~
 - [(d) specifies what the person must do in order to comply with the requirement;]
 - (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.
- (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)(ig) 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.

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 or repeated contravention of requirements imposed under sections ~~135 and 136, or either~~ [135, 136 and 137A, or any] 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 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 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 of a contravention given to that person under section 138, OFCOM have given a confirmation decision to that person under section 139A(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;

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 [~~], or who contravenes a requirement imposed under section 137A~~] 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~~ [comply with the requirement] 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~~ [135, 136 or 137A], he provides [or publishes] any information that is false in any material particular; and
 - (b) at the time he provides [or publishes] 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 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~~
 - [(b) 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 requirement have been complied with; 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~~ [135, 136 and 137A]; and
 - (b) the uses to which they are proposing to put information obtained under ~~those sections~~ [sections 135 and 136].

- (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.

Chapter 3
Disputes and appeals

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;
 - (iia) 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;
 - (e) a decision by the CMA to which effect is given by an order made under section 193A.
- (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, by the CMA 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 enactment 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 CMA

- (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 CMA for determination.
- (2) Where a price control matter is referred in accordance with Tribunal rules to the CMA for determination, the determination of the matter is to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, and ~~is to be~~

~~performed~~ [having regard to the principles to be applied by the Tribunal under section 194A(2), is to be performed]--

- (a) in accordance with the provision made by the rules;
 - (b) in accordance with directions given to the CMA 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 CMA consider appropriate.
- (3) The provision that may be made by Tribunal rules about the determination of a price control matter referred to the CMA in accordance with the rules includes provision about the period within which that matter is to be determined by the CMA.
- (4) Where the CMA 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 CMA 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 the CMA.
- (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 CMA 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 CMA 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 and section 193A "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).

193A. Recovery of CMA's costs in respect of price control references

- (1) Where a determination is made on a price control matter referred by virtue of section 193, the CMA may make an order in respect of the costs incurred by it in connection with the reference (a "costs order").
- (2) A costs order may require the payment to the CMA of some or all of those costs by such parties to the appeal which gave rise to the reference, other than OFCOM, as the CMA considers appropriate.
- (3) A costs order must--
 - (a) set out the total costs incurred by the CMA in connection with the reference, and
 - (b) specify the proportion of those costs to be paid by each party to the appeal in respect of whom the order is made.
- (4) In deciding on the proportion of costs to be paid by a party to the appeal the CMA must, in particular, consider--
 - (a) the extent to which the determination on the reference upholds OFCOM's decision in relation to the price control matter in question,
 - (b) the extent to which the costs were attributable to the involvement in the appeal of the party, and
 - (c) the conduct of the party.
- (5) A costs order--
 - (a) must be made as soon as reasonably practicable after the making of the determination on the reference, but
 - (b) does not take effect unless the Tribunal, in deciding the appeal which gave rise to the reference, decides the price control matter which is the subject of the reference in accordance with the determination of the CMA (see section 193(6)).
- (6) In a case where the Tribunal decides the price control matter in question otherwise than as mentioned in subsection (5)(b), the CMA may make an order under this subsection in respect of the costs incurred by it in connection with the reference.

- (7) Subsections (2) to (4) apply in relation to an order under subsection (6) as they apply in relation to an order under subsection (1); but for that purpose the reference in subsection (4)(a) to the determination on the reference is to be read as a reference to the decision of the Tribunal mentioned in subsection (6).
- (8) An order under subsection (6) must be made as soon as reasonably practicable after the decision of the Tribunal mentioned in that subsection.
- (9) An amount payable to the CMA by virtue of an order made under this section is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (10) The CMA must pay any sums it receives by virtue of this section into the Consolidated Fund.
- (11) The functions of the CMA under this section, other than those under subsections (9) and (10), are to be carried out on behalf of the CMA by the group constituted by the chair of the CMA in relation to the reference in question.

[194A Disposal of appeals under section 192 (other than against certain decisions of Secretary of State)

- (1) This section applies to an appeal against a decision referred to in section 192(1)(a), (b), (c), (d)(iii) or (e).
- (2) The Tribunal must decide the appeal, by reference to the grounds of appeal set out in the notice of appeal, by applying the same principles as would be applied by a court on an application for judicial review.
- (3) The Tribunal may—
 - (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and
 - (b) where it quashes the whole or part of that decision, remit the matter back to the decision-maker with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.
- (4) The decision-maker must comply with a direction under subsection (3)(b).
- (5) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (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.

- (6) In this section “the decision-maker” means the person who made the decision appealed against.]

195. Decisions of the Tribunal [Disposal of appeals under section 192 against certain decisions of Secretary of State]

~~(1) The Tribunal shall dispose of an appeal under section 192(2) in accordance with this section.~~

[(1) This section applies to an appeal against a decision referred to in section 192(1)(d)(i), (ii), (iia) or (iv).]

- (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~~ [the Secretary of State] 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~~ [the Secretary of State] 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~~ [the Secretary of State] 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~~ [the Secretary of State] 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, the Secretary of State or the CMA, 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, the Secretary of State or the CMA, or~~

~~(ii) the modification or withdrawal by such a person of such a direction, approval or consent,~~

~~that other person.~~