



# Office of Communications Act 2002

## 2002 CHAPTER 11

### **1 The Office of Communications**

- (1) There shall be a body corporate to be known as the Office of Communications (in this Act referred to as “OFCOM”).
- (2) OFCOM shall consist of such number of members as the Secretary of State may determine; but he shall not determine a membership for OFCOM of less than three or more than six.
- (3) The membership of OFCOM shall comprise—
  - (a) a chairman appointed by the Secretary of State;
  - (b) such number of other members appointed by the Secretary of State as he may determine; and
  - (c) the executive members.
- (4) The executive members of OFCOM shall comprise—
  - (a) the chief executive of OFCOM; and
  - (b) such other persons (if any) as may be appointed to membership of OFCOM from amongst their employees.
- (5) It shall be for the members of OFCOM mentioned in subsection (3)(a) and (b), after consulting the chief executive of OFCOM—
  - (a) to determine whether there should be any executive members falling within subsection (4)(b) and (subject to subsections (2) and (6)(a)) how many; and
  - (b) to make any appointments of executive members required for the purposes of any such determination.
- (6) The Secretary of State—
  - (a) may, by a direction to OFCOM, set a maximum and a minimum number for the executive members of OFCOM; and
  - (b) shall exercise his powers under this section to secure that the number of executive members of OFCOM is, so far as practicable, at all times less than the number of other members.

- (7) The Secretary of State may by order made by statutory instrument modify the numbers for the time being specified in subsection (2) as the maximum and minimum membership for OFCOM.
- (8) A statutory instrument containing an order under subsection (7) shall be subject to annulment in pursuance of a resolution of either House of Parliament; and the power to make such an order shall include power to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.
- (9) OFCOM shall not be treated for any purposes as a body exercising functions on behalf of the Crown; and, accordingly, no person shall be treated as a servant of the Crown by reason only of his membership of, or employment by, OFCOM.
- (10) The Schedule (which makes provision in relation to OFCOM) shall have effect.

## **2 Initial function of OFCOM**

- (1) It shall be the function of OFCOM (subject to subsection (5)) to do such things as they consider appropriate for facilitating the implementation of, or for securing the modification of, any relevant proposals about the regulation of communications.
- (2) It shall be the duty of OFCOM to carry out their function under subsection (1) in such manner as—
  - (a) appears to them to ensure, so far as they are facilitating the implementation of any such proposals, that there is effective co-operation in relation to the implementation of the proposals between themselves and both the existing regulators and the Secretary of State; and
  - (b) does not interfere—
    - (i) with the effective carrying out by the existing regulators of the functions conferred on them otherwise than by this Act; or
    - (ii) with the effective carrying out by the Secretary of State of his functions relating to wireless telegraphy.
- (3) In this Act references to relevant proposals about the regulation of communications are references to the following proposals (whether or not Parliament has given any approval on which the implementation of the proposals depends)—
  - (a) any proposals by the Secretary of State for the conferring on OFCOM (whether by transfers from the existing regulators or otherwise) of any functions relating to telecommunications, wireless telegraphy, broadcasting, radio and television services or other activities connected with the communications industry; and
  - (b) any other proposals by the Secretary of State made in association with any proposals falling within paragraph (a) and relating to the subject-matter of those proposals, to any matters that are incidental or supplemental to those proposals or to any consequential or transitional matters.
- (4) Subject to subsections (5) and (6), OFCOM shall have power, for the purpose of carrying out their function under subsection (1), to do such things as appear to them to be incidental or conducive to the carrying out of that function.
- (5) Nothing in this section shall be taken, in relation to proposals that have not yet been approved by Parliament—

- (a) as dispensing with the need for any Parliamentary approval otherwise required for the implementation of the proposals; or
  - (b) as authorising OFCOM, before any such approval is given, to engage in any activities other than activities which are connected with, or consist in, either—
    - (i) the formulation of the proposals; or
    - (ii) the taking of preparatory steps towards their implementation when approved.
- (6) OFCOM shall not have any power, for the purposes of or in connection with their function under this section, to borrow money from any person other than the Secretary of State.

### **3 Management of OFCOM**

OFCOM shall, in managing their affairs, have regard—

- (a) to such general guidance concerning the management of the affairs of public bodies as OFCOM consider appropriate; and
- (b) subject to any such guidance and only to the extent that they may reasonably be regarded as applicable in relation to a statutory corporation, to generally accepted principles of good corporate governance.

### **4 Functions of existing regulators**

- (1) The functions of each of the existing regulators shall (subject to subsection (4)) include—
- (a) a duty to do everything that is necessary for facilitating the implementation of any relevant proposals about the regulation of communications;
  - (b) a duty to carry out all that regulator's functions in such manner as appears to that regulator best to secure that OFCOM —
    - (i) is able effectively to carry out their function under section 2(1); and
    - (ii) will be able effectively to carry out any functions which will become functions of OFCOM in consequence of the implementation of any such proposals;
  - (c) a power to do all such other things as that regulator considers appropriate for facilitating the implementation of, or for securing the modification of, any relevant proposals about the regulation of communications;
  - (d) a power to carry out the functions of that regulator in a manner that promotes the interests of OFCOM.
- (2) It shall be the duty of each of the existing regulators to comply with any direction by the Secretary of State, in relation to the carrying out of that regulator's functions under this Act, that requires that regulator—
- (a) to prepare a draft scheme setting out, in the manner required by the Secretary of State, the regulator's proposals for any such transfers of property, rights and liabilities from that regulator to OFCOM as may be specified or described in the direction;
  - (b) to consult with OFCOM about those proposals; and
  - (c) to submit that draft scheme, in such form as he may require, to the Secretary of State.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Subject to subsection (4), each of the existing regulators shall have power, for the purpose of carrying out that regulator's functions under this section, to do such things as appear to that regulator to be incidental or conducive to the carrying out of those functions, including (without prejudice to the generality of that power) power to make payments to OFCOM, to second staff to OFCOM and to provide OFCOM with any information that they may request.
- (4) Nothing in this section or in any direction under this section shall be taken, in relation to proposals that have not yet been approved by Parliament—
  - (a) as dispensing with the need for any Parliamentary approval otherwise required for the implementation of the proposals; or
  - (b) as requiring or authorising an existing regulator, before any such approval is given, to engage in any activities other than activities which are connected with, or consist in, either—
    - (i) the formulation of the proposals; or
    - (ii) the taking of preparatory steps towards their implementation when approved.
- (5) The functions of the existing regulators by virtue of this section are in addition to, and without prejudice to the extent of, any of their powers apart from this Act.

## **5 Winding up of OFCOM on abandonment etc. of proposals**

- (1) If, in consequence of the abandonment or modification of any relevant proposals about the regulation of communications it appears to the Secretary of State that it is no longer necessary for OFCOM to continue to exist, he may by order provide for the winding up and dissolution of OFCOM.
- (2) If, in consequence of the abandonment or modification of any relevant proposals about the regulation of communications, it appears to the Secretary of State at any time after the end of 2003 that it is no longer necessary for OFCOM to continue to exist, it shall be the Secretary of State's duty to lay before Parliament a draft of an order under subsection (1) providing for OFCOM to be wound up and dissolved as soon as reasonably practicable.
- (3) The power to make an order under this section shall be exercisable by statutory instrument, and no such order shall be made unless a draft of the order has been laid before Parliament and has been approved by a resolution of each House.
- (4) If—
  - (a) in performance of the duty imposed by subsection (2), the Secretary of State lays a draft of an order under this section before Parliament, and
  - (b) a motion for the approval of the draft order is defeated in either House,that subsection shall not be taken to oblige the Secretary of State to lay any further draft of such an order before Parliament.
- (5) The power to make an order under this section shall include—
  - (a) power to make different provision for different cases;
  - (b) power to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.
- (6) Without prejudice to the generality of the preceding provisions of this section, the power to provide for the winding up of OFCOM shall include—

- (a) power to provide for the transfer of property, rights and liabilities of OFCOM to the Secretary of State, to any of the existing regulators or to any such other person as may be specified in the order;
  - (b) power to provide for the property, rights and liabilities of OFCOM to be divided between different persons;
  - (c) power, in connection with any provision made by virtue of paragraph (a) or (b)—
    - (i) for the creation of interests in property transferred or divided;
    - (ii) for the creation of rights and liabilities in relation to any such property; and
    - (iii) for the extinguishment of interests, right and liabilities;
  - (d) power to provide for the payment by the Secretary of State or OFCOM of compensation to persons suffering loss or damage in consequence of the provision made for the winding up of OFCOM.
- (7) An order providing for the dissolution of OFCOM may also contain provision repealing any of the provisions of section 1, 2 or 3 of this Act or of the Schedule.

## 6 Interpretation

- (1) In this Act—
- “existing 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;
  - “enactment” includes an enactment passed after the passing of this Act;
  - “modification” includes omissions, alterations and additions, and cognate expressions shall be construed accordingly;
  - “relevant proposals about the regulation of communications” shall be construed in accordance with section 2(3); and
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).
- (2) In this Act—
- (a) references to functions of an existing regulator or of the Secretary of State include references to functions conferred by any enactment or subordinate legislation at any time after the passing of this Act; and
  - (b) references to functions relating to wireless telegraphy include references to functions under any enactment contained in, or subordinate legislation made under, any of the following—
    - (i) the Wireless Telegraphy Act 1949 (c. 54);
    - (ii) the Wireless Telegraphy Act 1967 (c. 72);
    - (iii) the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41);
    - (iv) the Wireless Telegraphy Act 1998 (c. 6);
    - (v) Part 6 of the Telecommunications Act 1984 (c. 12).

## **7 Short title, commencement and extent**

- (1) This Act may be cited as the Office of Communications Act 2002.
- (2) Sections 1, 2 and 3 and the Schedule shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed under this subsection for different purposes.
- (3) This Act extends to Northern Ireland.
- (4) 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.