

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Functions of Ofcom

Section 1: Functions and general powers of OFCOM

11. This section sets out the functions of OFCOM. These consist of those functions that prior to commencement were carried out by the Secretary of State and the pre-commencement regulators and which are transferred to OFCOM, together with all other functions conferred on OFCOM by other legislation, including the present Act.

*the meaning of *pre-commencement regulators* is given in *subsection (1)* of section 405. Those regulators are the Broadcasting Standards Commission, the Director General of Telecommunications, the Independent Television Commission and the Radio Authority. The expression does not include the Radiocommunications Agency, as the Agency is an executive agency of the Department of Trade and Industry and acts in the name of the Secretary of State and, although functions of the Secretary of State are transferred to OFCOM by the Act, the office of the Secretary of State will not cease to exist, unlike the other four regulators.

12. *Subsections (3), (4) and (5)* provide that OFCOM have power to do anything incidental or conducive to carrying out their functions. This, in particular, includes the power to borrow money (provided that this is done with the consent of, or in accordance with a general authorisation given by, the Secretary of State), the power to undertake research and development work in relation to their functions as well as to promote and arrange for it to be carried out by others, the power to prosecute in England, Wales and Northern Ireland offences relating to matters in respect of which they have functions, and the power, at their discretion, to compensate (where no legal liability arises) persons adversely affected by OFCOM's activities.
13. *Subsection (6)* requires OFCOM to establish and maintain offices in England, Wales, Scotland and Northern Ireland.
14. *Subsection (7)* enables OFCOM to contract out their functions to a third party, where an order providing for such has been made by the Secretary of State under the Deregulation and Contracting Out Act 1994.

Section 2: Transfer of functions of pre-commencement regulators

15. *Subsection (1)* provides that, from such date as the Secretary of State may appoint for the coming into force of this section, certain functions of the Secretary of State and the functions of the pre-commencement regulators will be transferred to OFCOM. By virtue of section 411 the Secretary of State may appoint different dates for different purposes.

16. [Schedule 1](#) sets out those functions that will be transferred to OFCOM from the pre-commencement regulators. These functions relate to wireless telegraphy, the licensing of television and radio services, the Channel Four Corporation, the proscription of foreign satellite services, Gaelic Broadcasting, the national television archive, the reservation of digital capacity to the BBC, listed events, fairness and privacy in broadcasting, and standards for transmission services. The functions also relate to warrants to enter and search premises to enforce broadcasting licence provisions, variation of existing Channel 3 and Channel 5 licences, and reviewing digital broadcasting.
17. [Subsection \(2\)](#) explains the effect of the transfer of functions to OFCOM on references in existing legislation to the pre-commencement regulators and the Secretary of State. Where necessary, references in existing legislation to any of the pre-commencement regulators or the Secretary of State should be read as if they referred to OFCOM.
18. [Subsection \(3\)](#) provides that, from the appointed date, OFCOM will be able to exercise the functions transferred to them in respect of events or issues arising both before and after the appointed date.
19. [Subsection \(4\)](#) provides that any function transferred is that function as modified by this Act.
20. [Paragraph 1](#) of Schedule 18 (transitional provisions) provides that any subordinate legislation made or any other thing done for the purpose of carrying out the transferred functions by the pre-commencement regulators or the Secretary of State shall from the date of the transfer made by virtue of section 2 have effect as if they had been done by OFCOM.

Section 3: General duties of OFCOM

21. This section sets out the general duties of OFCOM when carrying out their functions. OFCOM's principal duty is: (i) to further the interests of citizens, and (ii) to further consumer interests in relevant markets, where appropriate by promoting competition. "Citizens" are defined in [subsection \(14\)](#) as all members of the public in the United Kingdom; "consumers" are defined in section 405(5).
22. [Subsection \(2\)](#) provides that the particular things that OFCOM are required to secure in carrying out their functions include: (a) the optimal use of the radio spectrum; (b) the availability throughout the United Kingdom of a wide range of electronic communications services; (c) the availability in the UK of a wide range of TV and radio services, comprising high quality services of broad appeal; (d) the maintenance of a sufficient plurality of providers of different television and radio services; (e) the application, in television and radio services, of standards that provide adequate protection to members of the public from any offensive and harmful material; and (f) the application, in television and radio services, of standards that safeguard people from being unfairly treated and from unwarranted infringements of privacy.
23. [Subsection \(3\)](#) requires OFCOM to have regard in all cases to the principles that regulatory activities should be transparent, accountable, proportionate, targeted and consistent, and to any other principles which appear to OFCOM to represent best regulatory practice.
24. [Subsection \(4\)](#) sets out a list of factors to which OFCOM must have regard, wherever relevant, in the performance of their general duties. These are the desirability of promoting the fulfilment of the purposes of public service television broadcasting, the desirability of promoting competition in relevant markets, the desirability of promoting and facilitating the development and use of effective self-regulation, the desirability of encouraging investment and innovation, the desirability of encouraging the availability and use of high speed data transfer services, the different needs of all existing and potential users of the radio spectrum, the need to guarantee an appropriate level of

freedom of expression when applying the standards falling within subsection (2)(e) and (f) to television and radio services, the opinions of consumers and of members of the public generally, the need to protect potentially vulnerable members of society such as children, the elderly, those with disabilities and those on low incomes, the desirability of preventing crime and disorder and the interests of those living in different parts of the country, including rural and urban areas, and of different ethnic communities. They may also have regard, in each case, to the extent to which it is reasonably practicable for them to further their duties under this section.

25. OFCOM must also have particular regard to the interests of consumers in respect of choice, price, quality of service and value for money when performing their duty of furthering the interests of consumers.
26. OFCOM are given a duty to resolve as they see fit any conflicts that arise between their various general duties. However, in cases where their general duties may conflict with their “European duties” (imposed by sections 4, 24 and 25), OFCOM’s European duties must prevail.
27. Where OFCOM are resolving conflicts in ‘important’ cases between their duties under subsection (1), they are required as soon as possible after the conflict has been resolved to publish a statement setting out the conflict, how they have resolved it and why they have taken that particular approach, unless they are legally obliged not to publish something which would be in the statement.
28. OFCOM’s annual report must include a summary of the manner in which they have resolved conflicts arising from their general duties in ‘important’ cases.
29. ‘Important’ cases are those that include: a major change in OFCOM’s activities; are likely to have a significant impact on communications businesses or the general public; or appear to OFCOM to have been of unusual importance.
30. OFCOM’s duties under this section do not apply in relation to anything done by OFCOM in the carrying out of their functions under the Competition Act 1998 or the Enterprise Act 2002, unless they are matters to which the Office of Fair Trading is entitled to have regard when operating under those Acts (section 370(11) and section 371(11) of this Act and section 119A(4) of the Enterprise Act 2002 (inserted by Chapter 2 of Part 5 of this Act)).

Section 4: Duties for the purpose of fulfilling Community obligations

31. This section creates a duty, which applies only to certain functions of OFCOM. These are their functions under:
 - Chapter 1 of Part 2;
 - the enactments relating to the management of the radio spectrum;
 - *Section 405(1) defines the *enactments relating to the management of the radio spectrum* as the Wireless Telegraphy Act 1949, the Marine, &c., Broadcasting (Offences) Act 1967, the Wireless Telegraphy Act 1967, Part 6 of the Telecommunications Act 1984, the Wireless Telegraphy Act 1998, Chapter 2 of Part 2 of the Act and the other provisions of the Act so far as relating to any of those enactments.
 - Chapter 3 of Part 2 relating to network access disputes referred to them under section 185;
 - sections 24 and 25, so far as they relate to information required for purposes connected with matters in relation to OFCOM functions specified in this section; and

- section 26, if carried out for the purpose of making information available to the customers of communications providers, the customers of persons who make associated facilities available and persons who use electronic communications networks, electronic communications services or associated facilities.
32. The duty is a duty to act in accordance with six Community requirements. In the event that there is any conflict between this duty and the section 3 duties, the former, which is required by the EC Communications Directives, is to take precedence.
33. The Community requirements are: (i) to promote competition; (ii) to ensure that OFCOM's activities contribute to the development of the European internal market; (iii) to promote the interests of all persons who are citizens of the European Union; (iv) to take account of the desirability of carrying out their functions in a manner which, so far as practicable, does not favour one form of network, service or associated facility, or one means of providing or making available such a network, service or facility over another; (v) to encourage the provision of network access and service interoperability; and (vi) to encourage compliance with international standards to the extent necessary to facilitate service interoperability, and to secure a freedom of choice for customers.
- **network access* is defined in section 151 as meaning (1) interconnection of public electronic communications networks; or (2) any services, facilities or arrangements (other than interconnection) by means of which a communications provider or a person making associated facilities available is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of any network or apparatus comprised in a network, or any service or facility capable of being used to provide a service.
- **service interoperability* is defined in section 151 as interoperability between different electronic communications services.
34. Requirements (i) to (iv) implement Articles 7(1) & (2) and 8 of Directive [2002/21/EC](#) (the "Framework Directive"). Requirement (v) implements Article 5(1) of Directive [2002/19/EC](#) ("the Access Directive") and Article 18 of the Framework Directive and requirement (vi) implements Article 17(2) and 18 of the Framework Directive. This section also implements Article 20 (3) of the Framework Directive and Article 7(3) of the Authorisation Directive.

Section 5: Directions in respect of networks or spectrum functions

35. This section gives the Secretary of State a power to give directions to OFCOM in respect of: (i) their functions relating to networks, services and the radio spectrum under Part 2 of the Act; and (ii) their functions relating to the management of the radio spectrum not contained in Part 2. Such directions may only be made for one or more of the purposes listed in *subsection (3)*. Those purposes are: national security, relations with foreign countries, compliance with international obligations, public safety and public health.
36. The Secretary of State may not use her powers under this section to direct OFCOM to suspend any person's entitlement to provide electronic communications networks or electronic communications services or to make available associated facilities. This can only be done by a direction given by the Secretary of State in accordance with the provisions of section 132. Section 132 gives the Secretary of State express power to direct OFCOM to suspend or restrict entitlement, where this appears to her to be necessary to protect the public from any threat to public safety or public health or in the interests of national security.
- **associated facilities* are defined in section 32.
37. The Secretary of State must publish a direction issued under this section unless publication is against the interests of national security or relations with foreign countries.

Section 6: Duties to review regulatory burdens

38. This section imposes on OFCOM a duty to review their functions so that regulation by OFCOM does not lead to the imposition or maintenance of burdens that are or have become unnecessary. OFCOM must from time to time publish a statement setting out how they propose to comply with this duty and must have regard to that statement when carrying out their functions. When reviewing their duties under this section, OFCOM must consider whether or not their general duties set out in section 3 may be furthered or secured, or are likely to be furthered or secured, by effective self-regulation and, in the light of that, whether it would be appropriate to remove or reduce regulatory burdens.

Section 7: Duty to carry out impact assessments

39. Unless the urgency of a matter makes it impracticable or inappropriate, before implementing an important proposal in connection with the performance of their functions, OFCOM must either carry out and publish their assessment of the likely impact of the proposals or publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out such an assessment. A proposal is an important proposal if it would be likely to involve a major change of their activities or have a significant impact on communications businesses or the general public. OFCOM will decide the form and content of the assessment, having regard to relevant general guidance, but *subsection (4)* requires that the assessment must set out how the proposal would secure or further the performance of OFCOM's general duties, or how the performance of the duties would be secured or furthered in relation to the proposals. When OFCOM publish an assessment, they must provide persons who are likely to be affected by the proposal with an opportunity to comment on it. OFCOM's annual report must set out the assessments that have been carried out under this section and summarise the decisions taken by OFCOM in relation to proposals in respect of which impact assessments have been carried out.

Section 8: Duty to publish and meet promptness standards

40. This section requires OFCOM to publish a statement setting out promptness standards which they propose to meet in carrying out their functions or transacting business for purposes connected with the carrying out of their functions. Such time limits will not apply where the Act or any other enactment already sets time limits within which their functions are to be carried out. OFCOM's annual report must summarise the extent to which they have complied with the promptness standards set out under this section.

Section 9: Secretary of State's powers in relation to promptness standards

41. Where the Secretary of State considers that the promptness standards set by OFCOM under section 8 are not satisfactory, she may notify OFCOM. If OFCOM fail to amend the promptness standards to her satisfaction, the Secretary of State may give a direction requiring OFCOM to issue or revise their promptness standards in accordance with its terms. Before issuing a direction, the Secretary of State must give OFCOM an opportunity to comment on her proposal. The Secretary of State cannot use her powers under this section until 12 months have elapsed after the commencement of section 8.

Section 10: Duty to encourage availability of easily usable apparatus

42. This section places a duty on OFCOM to take such steps and enter into such arrangements as appear to them calculated to encourage others to secure that domestic electronic communications apparatus (defined in *subsections (4) and (5)*) is developed which is capable of being used without modification by the widest possible range of individuals, including those with disabilities; and to secure that such apparatus is as widely available as possible. OFCOM are also to review from time to time whether they need to take further steps to perform their duty under this section. For example, many users find TV remote controls and similar devices inconvenient to use because

the buttons are so small. OFCOM might accordingly assist designers by dissemination of research results, ergonomic advice, etc., which might be helpful in identifying ways to minimise such inconvenience.

Section 11: Duty to promote media literacy

43. This section provides that it shall be a duty of OFCOM to enter into arrangements calculated to bring about, or to encourage others to bring about, increased public awareness and understanding of material published by the electronic media, the processes by which such material is selected or made available for publication, the available systems by which access to such published material is or can be regulated, and the available systems by which persons to whom such material is available may control what is received. OFCOM are also required to encourage the development and use of technologies and systems for regulating access to such material, and for facilitating control over what material is received. These could include internet filtering systems, rating systems by which, for example, programmes and videos can be given a classification that indicates the nature of their content, and other technical devices such as PIN-based systems to control viewing. Promotion of the use of such systems could include OFCOM participating in the development of related educational materials.

Section 12: Duty to establish and maintain Content Board

44. This section places OFCOM under a duty to set up and maintain a Content Board (a committee of OFCOM), the functions of which are set out in section 13.
45. *Subsections (2) to (11)* detail the composition of the Content Board, including OFCOM's duty to ensure that for each of England, Scotland, Wales and Northern Ireland, there is a different member of the Board, and to ensure that a majority of Board members is made up of individuals who are neither members nor employees of OFCOM. The chairman and at least one other member of the Content Board are to be appointed by OFCOM and must be non-executive members of OFCOM (other than their chairman). No governor or employee of the BBC, nor any member or employee of the Welsh Authority or the Channel Four Television Corporation can be a member of the Board, nor can any person whom OFCOM think has a conflict of interest (although such a conflict will not arise merely through being a member or employee of OFCOM).
46. *Subsection (13)* provides that, in addition to paying remuneration and expenses under paragraph 14(4) of the Schedule to the Office of Communications Act, OFCOM may pay such sums as they see fit by way of pensions, allowances or gratuities (or provide for the making of such payments) to members of the Content Board who are not members or employees of OFCOM.

Section 13: Functions of the Content Board

47. OFCOM are to determine which of their functions are to be delegated to the Content Board. To such an extent and subject to such restrictions as OFCOM may determine, these must include the functions set out in *subsection (2)*, namely, functions related to broadcast content and media literacy.
48. The Board must ensure that OFCOM are aware of the different interests and factors that need to be taken into account in the carrying out of OFCOM's broadcasting functions as respects different parts of the United Kingdom.
49. The Board may be authorised by OFCOM pursuant to *subsection (5)* to establish committees or panels to advise it in carrying out its functions. Members of those committees or panels may include persons who are not members of the Content Board.

Section 14: Consumer research

50. This section requires OFCOM to make arrangements to ascertain public opinion and the experiences of consumers on certain issues relating to the communications sector, including electronic communications networks and services, associated facilities and television and radio services and programmes distributed by other electronic media. In general, these arrangements may cover the carrying out of research by OFCOM, by the Content Board or by others. The arrangements must cover the carrying out of research into matters relating to the promotion of media literacy, the setting and observance of programme standards for radio and television, the prevention of unjust and unfair treatment of persons in those programmes and of unwarranted infringements of privacy resulting from those activities.
51. OFCOM are not required to make arrangements under this section in respect of the incidence or investigation of any interference with wireless telegraphy.

Section 15: Duty to publish and take account of research

52. This section requires OFCOM to publish, consider and, to such extent as they think fit, take account of research under section 14. This obligation does not extend to information that is confidential within the meaning of *subsections (3) or (4)*.

Section 16: Consumer consultation

53. This section places OFCOM under a duty to establish and maintain effective arrangements for consulting with consumers, in the markets for services and facilities in relation to which OFCOM have functions, the markets for apparatus used in connection with those services and facilities and the markets for directories capable of being used in connection with an electronic communications network or service. This section implements Article 33(1) of the Universal Service Directive.
54. Such arrangements must include the setting up of an advisory panel to be known as the Consumer Panel. The principal responsibilities of the Consumer Panel will be to advise OFCOM and others on the interests of domestic and small business consumers in relation to the matters listed in *subsection (3)*. Those matters include the provision of electronic communications networks and services and directory enquiry facilities; the making available of associated facilities; the supply of apparatus; service, quality and safety standards; financial and other terms of provision; complaints handling; dispute resolution and remedies; and the availability of information. The matters in *subsection (3)* about which the Panel are able to give advice do not, however, include matters that concern the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks. OFCOM may also refer additional matters not included in *subsection (3)* to the Panel for advice. The Panel may publish such information as they think fit about their advice, the results of their research or the carrying out of their other functions.

*the meaning of *domestic and small business consumer* is given in *subsection (10)*, and covers customers of a communications provider who are not themselves a communications provider, nor an undertaking for which more than 10 people work.

55. *Subsection (7)* places OFCOM under a duty, when carrying out their functions, to have regard to the advice and research of the Consumer Panel. OFCOM are also obliged to provide the Panel with such information as is necessary to enable the Panel to carry out their functions and such other information requested by the Panel as OFCOM can reasonably be expected to disclose (having regard particularly to confidentiality requirements). OFCOM must ensure that where they intend to disregard any of the Panel's published advice, they both publish this intention and inform the Panel of their reasons for disagreeing with this advice. Finally, the Consumer Panel must report on the carrying out of their functions on an annual basis and must publish their report as soon as practicable after it has been prepared.

Section 17: Membership etc. of the Consumer Panel

56. This section provides for the appointment of the chairman and other members to the Consumer Panel. The power to make all these appointments is conferred on OFCOM, subject to the approval of the Secretary of State. In appointing persons to be members of the Consumer Panel OFCOM must ensure that for each of England, Scotland, Wales and Northern Ireland there is a different member of the Panel capable of representing the interests and opinions of persons living in those parts of the United Kingdom. Also, OFCOM must seek to ensure that the Panel they appoint will be able to represent the interests of the categories of persons listed in *subsection (4)*, which includes persons living in rural areas, persons living in urban areas, small businesses, the disadvantaged, and the elderly. The Panel have a duty, when carrying out their functions, to have regard to the interests of those persons as well as the interests of persons from different parts of the United Kingdom.
57. All appointments to the Panel will be for a fixed period with provision for re-appointment. Members may be removed from the Panel by notice given by OFCOM, but, again, only with the approval of the Secretary of State. Being a member or employee of OFCOM disqualifies a person from becoming a Panel member.
58. *Subsection (9)* provides that OFCOM may pay to the chairman and to other members of the Consumer Panel such remuneration and allowances as OFCOM consider appropriate.

Section 18: Committees and other procedure of the Consumer Panel

59. The Consumer Panel may make such arrangements as they think fit for committees established by the Panel to give advice to them about matters relating to the carrying out of their functions. The Panel may make arrangements, including those related to quorums and the making of decisions by majority, regulating their own procedure and the procedure for committees established by them. Persons who are not members of the Panel may be members of a committee established by the Panel; however, every committee must include at least one person who is a member of the Panel. OFCOM may pay non-Panel members of a committee such remuneration and expenses as OFCOM may determine.

Section 19: Power to amend remit of Consumer Panel

60. The Secretary of State may by order add to (but not reduce) the list of matters in subsection (3) of section 16 in relation to domestic and small business consumers on which the Consumer Panel may advise OFCOM and other persons. Before making an order under this section, the Secretary of State must consult OFCOM and such other persons as she thinks fit.

Section 20: Advisory committees for different parts of the United Kingdom

61. This section places OFCOM under a duty to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 to establish and maintain a committee for each of England, Wales, Scotland and Northern Ireland. *Subsection (4)* provides that each committee shall have the function of providing advice to OFCOM about the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee is established.

**Communications matters* has the same meaning as in section 3.

62. *Subsections (2) and (3)* require each committee to be comprised of a chairman, appointed by OFCOM, and such number of other members as OFCOM think fit. In making the appointments, OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions in relation to

communications matters of persons living in the part of the UK for which the committee has been established.

63. Under *subsections (5) and (6)*, should the Consumer Panel so request, the committees for the different parts of the UK may also, with the consent of OFCOM, provide advice to the Consumer Panel on the interests and opinions of persons in the respective parts of the UK.

Section 21: Advisory committee on elderly and disabled persons

64. This section places OFCOM under a duty to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 to establish and maintain a committee to provide advice on the interests in relation to communications matters of elderly persons and of persons with disabilities.

**Communications matters* has the same meaning as in section 3.

65. *Subsections (2) and (3)* require each committee to be comprised of a chairman, appointed by OFCOM, and such number of other members as OFCOM think fit. In making the appointments, OFCOM must have regard to the desirability of ensuring that the members of the committee include persons who are familiar with the needs of the elderly and of persons who are familiar with the needs of persons with disabilities.
66. Under *subsections (5) and (6)*, should the Consumer Panel so request, the committee may also, with the consent of OFCOM, provide advice to the Consumer Panel on the interests of the elderly and of persons with disabilities.

Section 22: Representation on international and other bodies

67. The Secretary of State may, as respects the United Kingdom, require OFCOM to represent the Government on international and other bodies having communications functions and at international meetings about communications. The Secretary of State may also require OFCOM to become a member of or subscribe to international and other bodies having communications functions.
68. OFCOM may also, as respects the Channel Islands, the Isle of Man or any British overseas territory, at the request of the Secretary of State, represent the Government on international and other bodies having communications functions and at international meetings about communications. However, the Secretary of State cannot require them to do this.
69. *Subsection (3)* provides that OFCOM must carry out these functions in accordance with directions by the Secretary of State; and *subsection (4)* provides that this does not allow the Secretary of State to direct that OFCOM must represent any of the Channel Islands, the Isle of Man and the British overseas territories but that if OFCOM do represent any of them, the Secretary of State may direct them how.

**communications functions* are defined in *subsection (5)* as any function concerned with the use of the radio spectrum, television or radio broadcasting regulation, or any other matter in respect of which OFCOM have functions.

**subsection (5)* also defines *international meetings about communications* as international meetings concerned with the use of the radio spectrum, broadcasting regulation or provision, or any other matter in respect of which OFCOM have functions.

Section 23: Directions for international purposes in respect of broadcasting functions

70. This section gives the Secretary of State the power, by order, to give directions in respect of OFCOM's functions under the enactments relating to broadcasting. Such directions

may be given only for the purposes of securing compliance with an international obligation of the United Kingdom.

**international obligation of the United Kingdom* is defined in [section 405\(1\)](#) to include any Community obligation (within the meaning of the European Communities Act 1972) and any obligation under an international agreement or arrangement to which the United Kingdom is a party.

Section 24: Provision of information to the Secretary of State

71. This section provides that when directed to do so, OFCOM must provide the Secretary of State with such information as is required by the Secretary of State in order to enable her to secure compliance with an international obligation of the United Kingdom. This provision enables the Secretary of State to provide the European Commission with information requested pursuant to Article 25 of the Framework Directive, Article 16 of Directive [2002/20/EC](#) (“the Authorisation Directive”), Article 15(2) and 17 of the Access Directive and Article 36(3) of Directive [2002/22/EC](#) (“the Universal Service Directive”).

Section 25: Community requirement to provide information

72. This section provides that OFCOM are under a duty to comply with a requirement to provide the European Commission with information for the purpose of enabling it to perform any of its functions in relation to electronic communications networks or services or associated facilities. This provision is necessary in order to implement Article 5(2) of the Framework Directive and Article 15 of the Access Directive.

Section 26: Publication of information and advice for consumers etc.

73. This section allows OFCOM to publish information and advice for customers of communications providers; customers of persons who make available associated facilities; users of electronic communications networks, electronic communications services or associated facilities; and persons to whom radio and television services are, or may be, provided. OFCOM should, where practicable, not publish confidential or private information relating to a particular individual or body where this might seriously adversely affect the interests of that individual or body.
74. This section implements Article 5(4) and (5) of the Framework Directive, Article 15(1) of the Authorisation Directive, Article 11(2) and 15(1) of the Access Directive, and Article 21(2) of the Universal Service Directive.

Section 27: Training and equality of opportunity

75. This section requires OFCOM to take all such steps as they consider appropriate to: (i) promote the development of opportunities for the training and re-training of persons for employment by broadcasters or for work in connection with the provision of the services that they provide, otherwise than as an employee; (ii) promote equality of opportunity in relation to employment by broadcasters and the training and retraining of persons for such employment; and (iii) promote the equalisation of opportunities for disabled persons in relation to such employment, training and retraining. It is envisaged that, under this section, OFCOM might, for example, carry out or commission research, publish such research or other information, hold conferences and promulgate codes of practice or other guidance.

Section 28: General power to charge for services

76. This section gives OFCOM a general power to prescribe or agree fees to be charged for the services they provide, save in respect of any service that they are under a duty to provide, or for which fees are expressly provided (or prohibited) elsewhere.

Section 29: Secretary of State guarantees for OFCOM borrowing

77. This section allows the Secretary of State to guarantee, in such manner and on such conditions as she thinks fit, the repayment of the principal of any borrowing by OFCOM, the payment of any interest on such borrowing or the discharge of any other financial obligation incurred by OFCOM connected with such borrowing. *Subsection (3)* limits the total amount payable by the Secretary of State in fulfilling any guarantees she may give to a sum not exceeding £5 million. *Subsection (4)* enables the Secretary of State to substitute a different total amount, subject to a draft order to that effect being laid before Parliament and approved by the House of Commons (*subsection (5)*). Where OFCOM give a guarantee under this section, they must lay a statement of the guarantee before each House of Parliament. *Subsections (8) and (9)* provide that any sums paid by the Secretary of State in fulfilling any guarantee she has given must be repaid by OFCOM as the Secretary of State directs and that payments are to be made with such interest, at such times and in such manner as she may determine.

Section 30: Transfers of property etc. from pre-commencement regulators

78. This section gives the Secretary of State a power to give directions requiring any pre-commencement regulator to make a scheme or schemes for the transfer to OFCOM of any of that regulator's property, rights and liabilities. The Office of Communications Act 2002 gives the Secretary of State a power to require that such schemes are prepared in draft form. Before making such a scheme the pre-commencement regulator must consult OFCOM.
79. Such transfer schemes will become effective only if the Secretary of State approves them. *Subsection (6)* allows the Secretary of State to approve such schemes subject to modification.

*the meaning of *modification* is given in *subsection (1)* of section 405 and includes omissions, alterations and additions. Cognate expressions shall be construed accordingly.

80. *Subsections (10) and (11)* provide for the circumstances in which the Secretary of State may herself prepare a transfer scheme. These are: (i) in order to transfer property, rights and liabilities from herself to OFCOM; and (ii) in order to transfer property, rights and liabilities from a pre-commencement regulator to OFCOM where either (a) the regulator has not complied with a direction of the Secretary of State to prepare a scheme, or (b) the scheme prepared by the regulator is not approved by the Secretary of State.
81. **Schedule 2** covers the contents and effect of transfer schemes. It explains that a transfer scheme is to set out the property, rights and liabilities that are to be transferred. As soon as a scheme comes into force, property transferred by that scheme vests in OFCOM, and any agreement made by the transferor has effect as if made in the name of OFCOM. The Secretary of State may retrospectively modify the scheme as appropriate. The Schedule also describes the circumstances in which third parties whose interests are affected by the operation of a scheme – whether due to any diminution in value of their interests or rights, or any increase in the burden of their liabilities - are entitled to compensation. Any dispute as to compensation is to go to arbitration.

Section 31: Transitional functions and abolition of pre-commencement regulators

82. This section imposes a duty on the pre-commencement regulators to take all such steps as are necessary or expedient for ensuring that OFCOM are able effectively to carry out their functions from the time that they are vested in OFCOM. The Secretary of State may direct the pre-commencement regulators as to how to carry out this duty. OFCOM and the pre-commencement regulators must give the Secretary of State all such information and assistance as she requires for the purposes of carrying out her functions under section 30.

*These notes refer to the Communications Act 2003
(c.21) which received Royal Assent on 17 July 2003*

83. This section also gives the Secretary of State a power, by order, to appoint a day for the abolition of the offices of the pre-commencement regulators and of the advisory bodies established under section 54 of the Telecommunications Act 1984. The Secretary of State may appoint different days for the abolition of each of the different regulators and advisory bodies.

*Section 54 of the Telecommunications Act 1984 provides for the establishment of various advisory bodies to advise the Director General of Telecommunications. The Secretary of State was required to set up an advisory body for matters affecting each of the following: England, Wales, Scotland, Northern Ireland, and the Director was required to establish advisory bodies for matters affecting small businesses, and matters affecting persons who are disabled or of pensionable age. In addition, the Director was empowered to establish such other advisory bodies as he thought fit. Section 54 is repealed by *subsection (5)* of section 31.