

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Television and Radio Services

Chapter 4: Regulatory Provisions

Section 294: Supplemental provision about networking arrangements

625. [Schedule 11](#) sets out the procedures to be followed by OFCOM when approving, imposing or modifying networking arrangements under sections 291 to 293.
626. Where networking arrangements (and modifications thereto) are submitted to OFCOM for their approval, OFCOM must publish a description of those arrangements and allow third parties a reasonable period of time to comment on them. OFCOM may then approve, or conditionally approve, or reject the arrangements (or modifications to them). Before deciding to give a conditional approval requiring changes to the arrangements, OFCOM must consult each holder of a regional Channel 3 licence about the changes. OFCOM must then, subject to confidentiality, publish their decision and their reasons for it. Once arrangements have been approved by OFCOM they are not to be modified without OFCOM's approval.
627. [Paragraph 5](#) requires OFCOM to publish, subject to confidentiality, reports explaining any networking arrangements that they impose under section 292 and the outcome of any reviews carried out under section 293.
628. Under paragraphs 6 and 7, OFCOM must not approve, impose or modify any networking arrangements under sections 291 to 293 unless:
- they are satisfied that the arrangements satisfy the first or second competition tests (as described in the note to section 293 above); and
 - they consider that the networking arrangements represent a satisfactory means of achieving the purpose of enabling regional Channel 3 services (taken as a whole) to compete effectively with other television programme services provided in the United Kingdom. OFCOM must also take into consideration the likely effect of the arrangements on the ability of regional Channel 3 licensees to maintain the quality and range of their regional programmes and the regional character of their services.
629. Under paragraph 8, OFCOM may not approve, impose or modify any networking arrangements where it appears to them that they are likely to prejudice the ability of regional Channel 3 licensees to comply with their public service remits or conditions imposed under sections 286, 287 or 352.
630. [Paragraph 9](#) confers a right of appeal against OFCOM's decisions concerning the competition aspects of networking arrangements. The right of appeal extends to any holder of a regional Channel 3 licence. An appeal may be brought only by sending a notice of appeal to the Competition Appeal Tribunal (CAT) and on the grounds listed

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

in sub-paragraph (4). A Channel 3 licensee is not required to comply with OFCOM's decision, pending the outcome of the appeal.

631. The CAT is to decide the appeal on the merits. The CAT is to decide whether OFCOM's decision was appropriate and may confirm OFCOM's decision or issue any directions it considers are necessary to give effect to its decision. OFCOM must comply with any such directions. A decision of the CAT may be appealed under paragraph 11 on a point of law to the Court of Appeal or, in Scotland, to the Court of Session. Such an appeal may, with the permission of the CAT or the appellate court, be brought by a party to the original CAT proceedings.
632. [Paragraph 12](#) allows OFCOM to require any person to provide them with information necessary to enable OFCOM to carry out their functions under section 293 or Schedule 11. *Sub-paragraph (4)* limits the types of document that OFCOM may demand. The High Court, the Court of Session or, in Northern Ireland, the High Court or a judge of the High Court may, on an application made by OFCOM, enquire into whether a person has refused or otherwise failed (without reasonable excuse) to comply with a request from OFCOM. If the court is satisfied that that is the case, the person concerned may be punished as if he had been held in contempt of court (paragraph 13).
633. A person is guilty of an offence under paragraph 13 if he:
- intentionally alters, suppresses or destroys a document requested by OFCOM; or
 - knowingly or recklessly provides OFCOM with false or misleading information himself or knowingly or recklessly provides false or misleading information to a third person which he knows will be provided to OFCOM.
634. The penalties to which any person found guilty of committing an offence will be liable are set out in sub-paragraph (11).