



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Regulation of premium rate services

120 Conditions regulating premium rate services

- (1) OFCOM shall have the power, for the purpose of regulating the provision, content, promotion and marketing of premium rate services, to set conditions under this section that bind the persons to whom they are applied.
- (2) Conditions under this section may be applied either—
 - (a) generally to every person who provides a premium rate service; or
 - (b) to every person who is of a specified description of such persons, or who provides a specified description of such services.
- (3) The only provision that may be made by conditions under this section is provision requiring the person to whom the condition applies to comply, to the extent required by the condition, with—
 - (a) directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions; and
 - (b) if there is no such code, the provisions of the order for the time being in force under section 122.
- (4) The power to set a condition under this section includes power to modify or revoke the conditions for the time being in force under this section.

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- (5) Sections 47 and 48 apply to the setting, modification and revocation of a condition under this section as they apply to the setting, modification and revocation of a condition under section 45.
- (6) OFCOM must send a copy of every notification published under section 48(1) with respect to a condition under this section to the Secretary of State.
- (7) A service is a premium rate service for the purposes of this Chapter if—
- (a) it is a service falling within subsection (8);
 - (b) there is a charge for the provision of the service;
 - (c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - (d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.
- (8) A service falls within this subsection if its provision consists in—
- (a) the provision of the contents of communications transmitted by means of an electronic communications network; or
 - (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.
- (9) For the purposes of this Chapter a person provides a premium rate service (“the relevant service”) if—
- (a) he provides the contents of the relevant service;
 - (b) he exercises editorial control over the contents of the relevant service;
 - (c) he is a person who packages together the contents of the relevant service for the purpose of facilitating its provision;
 - (d) he makes available a facility comprised in the relevant service; or
 - (e) he falls within subsection (10), (11) or (12).
- (10) A person falls within this subsection if—
- (a) he is the provider of an electronic communications service used for the provision of the relevant service; and
 - (b) under arrangements made with a person who is a provider of the relevant service falling within subsection (9)(a) to (d), he is entitled to retain some or all of the charges received by him in respect of the provision of the relevant service or of the use of his electronic communications service for the purposes of the relevant service.
- (11) A person falls within this subsection if—
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and
 - (b) an agreement relating to the use of the network for the provision of that service subsists between the provider of the network and a person who is a provider of the relevant service falling within subsection (9)(a) to (d).
- (12) A person falls within this subsection if—
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and

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- (b) the use of that network for the provision of premium rate services, or of services that include or may include premium rate services, is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the relevant service by virtue of subsection (10) or (11).
- (13) Where one or more persons are employed or engaged under the direction of another to do any of the things mentioned in subsection (9)(a) to (d), only that other person shall be a provider of the relevant service for the purposes of this Chapter.
- (14) References in this section to a facility include, in particular, references to—
- (a) a facility for making a payment for goods or services;
 - (b) a facility for entering a competition or claiming a prize; and
 - (c) a facility for registering a vote or recording a preference.
- (15) In this section—
- “approved code” means a code for the time being approved under section 121;
 - “enforcement authority”, in relation to such a code, means the person who under the code has the function of enforcing it; and
 - “intermediary service provider” means a person who—
 - (a) provides an electronic communications service used for the provision of the relevant service or an electronic communications network so used; and
 - (b) is a party to an agreement with—
 - (i) a provider of the relevant service falling within subsection (9) (a) to (d), or
 - (ii) another intermediary service provider,which relates to the use of that electronic communications service or network for the provision of premium rate services, or of services that include or may include premium rate services.