
EXPLANATORY NOTE

(This note is not part of the Order)

This Order permits the contracting out of functions of OFCOM relating to the regulation of broadcast advertising under the following legislation:

- (a) the Communications Act 2003, the Broadcasting Act 1996 and the Broadcasting Act 1990 (article 3);
- (b) the Control of Misleading Advertisements Regulations 1988 (article 6); and
- (c) the Medicines (Monitoring of Advertising) Regulations 1994 (article 7).

In the case of functions under the Communications Act 2003 which may be contracted out, the Order identifies certain matters in connection with those functions which cannot be contracted out (article 5).

Where a person is authorised to exercise any function by virtue of this Order, the legislation under which the function is exercised will have effect as though it authorised or required that person to do the same things as OFCOM would also be authorised or required to do in connection with the same function (article 8).

Where a person is authorised to carry out a function by virtue of article 3, the Order makes provision—

- (a) for that person to be able to request broadcasters to produce recordings of programmes included in their services or to make and use such recordings himself without infringing the Copyright, Designs and Patents Act 1988 (article 9);
- (b) for that person to require broadcasters to provide him with the information he may require for the purpose of exercising that function (article 10); and
- (c) for that person to be subject to the same general restrictions on disclosure of information under section 393 of the 2003 Act as OFCOM would be in exercise of the same power to obtain information (article 11).

Article 11 also provides, under the power in section 393 of the Communications Act 2003, to add functions conferred by the Medicines (Monitoring of Advertising) Regulations 1994 to the range of “relevant functions” pursuant to which the disclosure of information may be permitted under that Act.

There are transitional arrangements under which a person authorised to consider complaints by virtue of this Order can assume responsibility for relevant complaints which remained unresolved by OFCOM at the date on which his authorisation took effect (article 12).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.