



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *Persistent misuse of network or service*

#### **128 Notification of misuse of networks and services**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services, they may give that person a notification under this section.
- (2) A notification under this section is one which—
  - (a) sets out the determination made by OFCOM;
  - (b) specifies the use that OFCOM consider constitutes persistent misuse; and
  - (c) specifies the period during which the person notified has an opportunity of making representations about the matters notified.
- (3) That period must not be less than the following—
  - (a) in an urgent case, seven days; and
  - (b) in any other case, one month.
- (4) A case is an urgent case for the purposes of subsection (3) if OFCOM consider—
  - (a) that the misuse in question is continuing; and
  - (b) that the harm it causes makes it necessary for it to be stopped as soon as possible.

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- (5) For the purposes of this Chapter a person misuses an electronic communications network or electronic communications service if—
- (a) the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or
  - (b) he uses the network or service to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety.
- (6) For the purposes of this Chapter the cases in which a person is to be treated as persistently misusing a network or service include any case in which his misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents—
- (a) a pattern of behaviour or practice; or
  - (b) recklessness as to whether persons suffer annoyance, inconvenience or anxiety.
- (7) For the purpose of determining whether misuse on a number of different occasions constitutes persistent misuse for the purposes of this Chapter, each of the following is immaterial—
- (a) that the misuse was in relation to a network on some occasions and in relation to a service on others;
  - (b) that different networks or services were involved on different occasions; and
  - (c) that the persons who were or were likely to suffer annoyance inconvenience or anxiety were different on different occasions.
- (8) If he considers that appropriate alternative means of dealing with it exists, the Secretary of State may by order provide that a use of a description specified in the order is not to be treated for the purposes of this Chapter as a misuse of an electronic communications network or electronic communications service.

**Modifications etc. (not altering text)**

- C1** Ss. 128-131 modified (31.12.2020) by [The Communications Act \(e-Commerce\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1420\)](#), regs. 1, 2

**Commencement Information**

- I1** S. 128 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I2** S. 128 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

**129 Enforcement notifications for stopping persistent misuse**

- (1) This section applies where—
- (a) a person (“the notified misuser”) has been given a notification under section 128;
  - (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and
  - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may give the notified misuser an enforcement notification if they are satisfied—

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- (a) that he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service; and
  - (b) that he has not, since the giving of the notification, taken all such steps as OFCOM consider appropriate for—
    - (i) securing that his misuse is brought to an end and is not repeated; and
    - (ii) remedying the consequences of the notified misuse.
- (3) An enforcement notification is a notification which imposes a requirement on the notified misuser to take all such steps for—
- (a) securing that his misuse is brought to an end and is not repeated, and
  - (b) remedying the consequences of the notified misuse,
- as may be specified in the notification.
- (4) A decision of OFCOM to give an enforcement notification to a person must fix a reasonable period for the taking of the steps required by the notification.
- (5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty shall be enforceable in civil proceedings by OFCOM—
- (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (7) References in this section to remedying the consequences of misuse include references to paying an amount to a person—
- (a) by way of compensation for loss or damage suffered by that person; or
  - (b) in respect of annoyance, inconvenience or anxiety to which he has been put.

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**Modifications etc. (not altering text)**

**C2** Ss. 128-131 modified (31.12.2020) by [The Communications Act \(e-Commerce\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1420\)](#), regs. 1, 2

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**Commencement Information**

**I3** S. 129 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

**I4** S. 129 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

## 130 Penalties for persistent misuse

- (1) This section applies (in addition to section 129) where—
- (a) a person (“the notified misuser”) has been given a notification under section 128;
  - (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and
  - (c) the period allowed for the making of the representations has expired.

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- (2) OFCOM may impose a penalty on the notified misuser if he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service.
- (3) OFCOM may also impose a penalty on the notified misuser if he has contravened a requirement of an enforcement notification given in respect of the notified misuse.
- (4) The amount of a penalty imposed is to be such amount not exceeding [<sup>F1</sup>£2,000,000] as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the misuse in respect of which it is imposed.
- (5) In making that determination OFCOM must have regard to—
  - (a) any representations made to them by the notified misuser;
  - (b) any steps taken by him for securing that his misuse is brought to an end and is not repeated; and
  - (c) any steps taken by him for remedying the consequences of the notified misuse.
- (6) Where OFCOM impose a penalty on a person under this section, they shall—
  - (a) notify the person penalised; and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section—
  - (a) must be paid to OFCOM; and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (8) It is to be possible for a person to be both liable for an offence under sections 125 to 127 and to have a penalty imposed on him under this section in respect of the same conduct.
- (9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (4).
- (10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

#### Textual Amendments

**F1** Word in s. 130(4) substituted (25.9.2010) by [Communications Act 2003 \(Maximum Penalty for Persistent Misuse of Network or Service\) Order 2010 \(S.I. 2010/2291\)](#), arts. 1, **2(1)** (with art. 2(2))

#### Modifications etc. (not altering text)

**C3** Ss. 128-131 modified (31.12.2020) by [The Communications Act \(e-Commerce\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1420\)](#), regs. 1, 2

#### Commencement Information

**I5** S. 130 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

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**I6** S. 130 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with [art. 11](#))

### **131 Statement of policy on persistent misuse**

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to the exercise of their powers under sections 128 to 130.
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 128 to 130, to have regard to the statement for the time being in force under this section.

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#### **Modifications etc. (not altering text)**

**C4** Ss. 128-131 modified (31.12.2020) by [The Communications Act \(e-Commerce\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1420\)](#), regs. 1, 2

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#### **Commencement Information**

- I7** S. 131 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I8** S. 131 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with [art. 11](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)