



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *Administrative charges imposed on providers*

### **38 Fixing of charges**

- (1) A person who, at any time in a charging year, is a person to whom this section applies shall—
- (a) in respect of the network, service or facility provided or made available by him,
  - (b) in respect of the application to him of a universal service condition relating to matters mentioned in section 66(3),
  - (c) in respect of the application to him of an SMP apparatus condition, or
  - (d) in respect of the application of the electronic communications code in his case,
- pay to OFCOM the administrative charge (if any) that is fixed by them for the case that is applicable to him.
- (2) This section applies to a person at a time if, at that time, he is—
- (a) providing an electronic communications network of a description which is, at that time, designated for the purposes of this section;
  - (b) providing an electronic communications service of a description which is, at that time, so designated;
  - (c) making available an associated facility of a description which is, at that time, so designated;

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- (d) a person who without being a communications provider is designated in accordance with regulations under section 66;
  - (e) a supplier of apparatus to whom an SMP apparatus condition applies; or
  - (f) a person in whose case the electronic communications code applies by virtue of a direction given under section 106 otherwise than for the purposes of the provision by him of an electronic communications network of a designated description.
- (3) OFCOM are not to fix the administrative charge for a charging year unless—
- (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that OFCOM are proposing to apply in fixing charges under this section for that year; and
  - (b) the charge is fixed in accordance with those charging principles.
- (4) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make—
- (a) that, on a year by year basis, the aggregate amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out the functions mentioned in subsection (5);
  - (b) that the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed;
  - (c) that the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent;
  - (d) that the charges fixed for persons who are liable to charges by reason only of being persons to whom SMP apparatus conditions apply are referable only to things done in, or in connection with, the setting, modification or enforcement of SMP apparatus conditions or the carrying out of the functions mentioned in subsection (6)(l); and
  - (e) that the charges fixed for persons who are liable to charges by reason only of being persons falling within subsection (2)(f), are referable only to costs incurred in, or in connection with, the carrying out of the functions mentioned in subsection (6)(g) and (l).
- (5) Those functions are—
- (a) the relevant Chapter 1 functions;
  - (b) the carrying out for a Chapter 1 purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(1)(c) to (f);
  - (c) the publication under section 26 of any information or advice that it appears to OFCOM to be appropriate to make available to the persons mentioned in subsection (2)(a) to (c) of that section; and
  - (d) the function of taking any steps that OFCOM consider it necessary to take—
    - (i) in preparation for the carrying out of any of the functions mentioned in paragraphs (a) to (c) of this subsection; or
    - (ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.
- (6) The relevant Chapter 1 functions are—
- (a) OFCOM's functions under sections 33 to 37 and 44;
  - (b) the setting, modification and enforcement of conditions under section 45;

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- (c) the supervision, as respects the requirements of sections 33 to 37 and of any such conditions, of communications providers and of persons who make associated facilities available;
  - (d) the monitoring of compliance with those requirements and with any such conditions;
  - (e) the functions conferred on OFCOM by or under section 55;
  - [<sup>F1</sup>(ea) their functions under sections 93A to 93D;
  - (eb) the monitoring of compliance with commitments that are made binding by a commitments decision;
  - <sup>F2</sup>(ec) .....]
  - <sup>F3</sup>(f) .....
  - (g) their functions under sections 106 to 119;
  - (h) their functions under sections 185 to 191;
  - (i) securing international co-operation in relation to the regulation of electronic communications networks, electronic communications services and associated facilities;
  - (j) securing the harmonisation and standardisation of the regulation of electronic communications networks, electronic communications services and associated facilities;
  - (k) market analysis and any monitoring of the controls operating in the markets for electronic communications networks, electronic communications services and associated facilities;
  - (l) OFCOM's functions under this section and sections 39 to 43.
- (7) A purpose is a Chapter 1 purpose for the purposes of subsection (5)(b) if it is the purpose of ascertaining the effectiveness of one or more of the following—
- (a) the regulation of the provision of electronic communications networks or electronic communications services;
  - (b) the regulation of the making available of associated facilities;
  - (c) the mechanisms in place for the handling, by communications providers and by persons making such facilities available, of complaints made to them by consumers in markets for such services or facilities;
  - (d) the mechanisms in place for resolving disputes between such consumers and communications providers or persons who make such facilities available.
- (8) OFCOM's power to fix charges for a particular case includes—
- (a) power to provide that the charges in that case are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them;
  - (b) power to provide for different charges to be imposed in that case on different descriptions of persons; and
  - (c) power to provide for particular descriptions of persons falling within subsection (2)(d) to (f) to be excluded from the liability to pay charges in that case.
- (9) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement setting out, in respect of that year—
- (a) the aggregate amounts of the administrative charges for that year that have been received by OFCOM;

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- (b) the aggregate amount of the administrative charges for that year that remain outstanding and are likely to be paid or recovered; and
  - (c) the cost to OFCOM of carrying out the functions mentioned in subsection (5).
- (10) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (9) shall be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (4)(a) in relation to the following year.
- (11) Section 34 applies in relation to the making and withdrawal of a designation for the purposes of this section as it applies to the making and withdrawal of a designation for the purposes of section 33.
- [<sup>F4</sup>(11A) For the purposes of this section, the cost to OFCOM of carrying out the functions mentioned in subsection (5) does not include the cost to OFCOM of doing anything for which they charge a fee under section 28A.]
- (12) In this section “charging year” means—
- (a) the period beginning with the commencement of this section and ending with the next 31st March; or
  - (b) any subsequent period of twelve months beginning with 1st April.

#### Textual Amendments

- F1** S. 38(6)(ea)-(ec) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 9**
- F2** S. 38(6)(ec) omitted (1.10.2022) by virtue of [Telecommunications \(Security\) Act 2021 \(c. 31\)](#), **ss. 25(2)**, 28(2)(d); S.I. 2022/931, reg. 2(d)
- F3** S. 38(6)(f) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 14** (with Sch. 3 para. 2)
- F4** S. 38(11A) inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 101(3)**, 118(6); S.I. 2017/765, reg. 2(cc)

#### Commencement Information

- I1** S. 38 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. 38 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)

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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\(1\)](#)