



Communications Act 2003

2003 CHAPTER 21

PART 6

MISCELLANEOUS AND SUPPLEMENTAL

Supplemental

402 Power of Secretary of State to make orders and regulations

- (1) Every power conferred by [^{F1}section 124P and] this Act on the Secretary of State to make orders or regulations, other than the powers conferred by Schedule 4, is a power exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations made in exercise of any such power, other than—
 - (a) an order under section 31 or 411 ^{F2}...,
 - [^{F3}(aza) regulations under—
 - (i) section 321A(7) (see subsection (9) of that section),
 - (ii) section 368BC (see subsection (7) of that section),
 - (iii) section 368FA(7) (see subsection (9) of that section),
 - (iv) section 368Z14(8) (see subsection (10) of that section), or
 - (v) section 368Z20 (see subsection (5) of that section),]
 - [^{F4}(aa)
 - [^{F5}(aa) regulations within subsection (2A),]
 - [^{F6}(b)
 - (c) any order that is required, by any provision of this Act, to be laid before Parliament and approved in draft, [^{F7}or
 - (d) any regulations that are required, by any provision of this Act, to be laid before Parliament and approved in draft,]

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Changes to legislation: Communications Act 2003, Section 402 is up to date with all changes known to be in force on or before 08 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- [^{F8}(2A) A statutory instrument containing (whether alone or with other provisions) [^{F9}regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation,][^{F9}any of the following] may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament [^{F10}—
- (a) regulations under paragraph 27E(4) of Schedule 3A;
 - (b) regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation.]]
- (3) Every power of the Secretary of State to make an order or regulations under this Act, other than an order under section 31 or 411 or an order made in exercise of a power conferred by Schedule 4, includes power—
- (a) to make different provision for different cases (including different provision in respect of different areas);
 - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.
- [^{F11}(4) In this section “primary legislation” means—
- (a) an Act of Parliament,
 - (b) a Measure or Act of the National Assembly for Wales,
 - (c) an Act of the Scottish Parliament, or
 - (d) Northern Ireland legislation.]

Textual Amendments

- F1** Words in s. 402(1) inserted (6.4.2024) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 20(3)**, 47(3)(a); S.I. 2023/792, art. 3(b)
- F2** Words in s. 402(2)(a) omitted (28.6.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(4), **Sch. 18 para. 6(a)**
- F3** S. 402(2)(aza) inserted (28.6.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(4), **Sch. 18 para. 6(b)**
- F4** S. 402(2)(aa) inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 47(2)**; S.I. 2017/765, reg. 2(jj)
- F5** S. 402(2)(aa) substituted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), **Sch. para. 3(a)**; S.I. 2022/1308, reg. 3(c)
- F6** S. 402(2)(b) repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with Sch. 8 Pt. 1)
- F7** S. 402(2)(d) and word inserted (17.11.2021) by [Telecommunications \(Security\) Act 2021 \(c. 31\)](#), **ss. 25(3)(b)**, 28(1)(e)
- F8** S. 402(2A) inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 47(3)**; S.I. 2017/765, reg. 2(jj)
- F9** Words in s. 402(2A) substituted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), **Sch. para. 3(b)(i)**; S.I. 2022/1308, reg. 3(c)
- F10** S. 402(2A)(a)(b) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), **Sch. para. 3(b)(ii)**; S.I. 2022/1308, reg. 3(c)
- F11** S. 402(4) inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 47(4)**; S.I. 2017/765, reg. 2(jj)

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Commencement Information

- I1** S. 402 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. 402 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 :

- s. 402(2) word omitted by [2021 c. 31 s. 25\(3\)\(a\)](#)
- s. 402(2)(a) words inserted by [2022 c. 46 s. 73\(3\)](#)
- 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\(1\)](#)