

# TELECOMMUNICATIONS LAWS OF THE WORLD

United Kingdom



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# UNITED KINGDOM



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## OVERVIEW OF LEGAL LANDSCAPE

Subject to a handful of discrete exceptions (i.e concerning the use of spectrum and operation of radio apparatus which requires a licence, and the allocation of numbering resources which requires formal allocation), communication providers have general authorisation to operate in the UK and do not require a licence, permit, consent etc.

This concept of general authorisation was originally derived from the European Authorisation Directive (now replaced by the Electronic Communications Code) and was implemented in EU Member States, and the UK. Unlike EU Member States, the UK does not require any prior notification to, or registration with, the telecommunications sector regulator, the Office of Communications ('Ofcom') of an operator's intention to provide communications networks or communications services.

The roles and responsibilities of Ofcom are codified in the key telecommunications legislation in the UK, the Communications Act 2003. Ofcom regulates the TV and radio sectors, fixed line telecommunications, mobiles, postal services, plus the airwaves over which wireless devices operate. Ofcom also has functions related to furthering the interests of consumers in relevant markets.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecommunications sector in the UK is the Communications Act 2003 which came into force on 25 July 2003 (largely replacing the Telecommunications Act 1984). The Communications Act 2003 implemented the following European Directives:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services.
- Directive 2002/20/EC on the authorisation of electronic communications networks and services.
- Directive 2002/19/EC on access to and interconnection of electronic networks and associated facilities.
- Directive 2002/22/EC on universal service and user rights.

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In 2018, the European Electronic Communications Code (EECC) was established by Directive 2018/1972/EC. The EECC includes new consumer protections, among other updates to the EU communications regulatory framework. The majority of the reforms under the EECC have been implemented in the UK through amendments to the Communications Act, and amendments to Ofcom's General Conditions of Entitlement.

In addition to the Communications Act, the following legislation (and subordinate legislation sitting underneath) may also impact the provision of communication services and the operation of communication networks:

- The Wireless Telegraphy Act 2006, which sets out the regulatory framework for radio spectrum and operation of radio apparatus. Under the Wireless Telegraphy Act 2006, the use of spectrum and operation of radio apparatus requires a licence, unless a relevant exemption applies.
- The Competition Act 1998.
- The Data Protection Act 1998 which governs the processing of personal data, and the Privacy and Electronic Communications Regulations which sets out privacy rights in relation to electronic communications.
- The Regulation of Investigatory Powers Act 2000, and the Investigatory Powers Act 2016, which govern the interception of the communications. For example, the Investigatory Powers Act 2016 permits certain public bodies to require telecommunications operators to establish technical means to intercept communications made over their networks (and related data) and to provide such intercepted communications and data to such public bodies.
- The National Security and Investment Act 2021, which establishes a regime for the government to scrutinise and intervene in acquisitions made in several sensitive sectors (including the communications sector) which could negatively affect the UK's national security. Under this regime, a mandatory and voluntary notification requirement is established.

The key features of the Communication Act are:

- Although communication providers are generally authorised, this authorisation is subject to compliance with the General Conditions of Entitlement published by Ofcom [here](#). The primary purpose of this is to protect recipients of communication services and they include conditions regulating the contents of bills, accessibility of information etc. The General Conditions of Entitlement also set out network functioning conditions applicable to providers of communications networks. It is the responsibility of each communications provider to consider which of the current General Conditions of Entitlement are applicable to the services and networks they provide.
- In addition to the published General Conditions of Entitlement, Ofcom has the power to set specific conditions relating to universal services, access, privileged suppliers and - most notably - 'significant market power' (SMP). Ofcom has a duty to periodically review the telecommunications markets, and where it finds that one (or more) operators have SMP it must impose such a condition on the SMP operator(s).
- The regulation and allocation of telephone numbers and controls and restrictions relating to premium rate telephone services.
- The principle of universal service; that affordable basic telephony, and affordable broadband services of a minimum service quality, should be available to everyone.
- Ofcom is empowered to hear disputes between communications providers (although referral to Ofcom does not preclude the bringing of court proceedings).

The Electronic Communications Code, as set out in Schedule 3A of the Communications Act 2003, sets out the powers that can be given to providers of electronic communications networks (ECNs) and providers of conduit systems available for use by providers of ECNs to enable them to install and maintain electronic communications apparatus on land, including land owned by third parties.

## REGULATORY BODIES OR AUTHORITIES

### Ofcom

Address: Ofcom Riverside House, 2a Southwark Bridge Road, London, SE1 9HA

Website: [www.ofcom.org.uk](http://www.ofcom.org.uk)

## TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Broadly speaking there are two types of communication providers for the purposes of the Communications Act; providers of electronic communication networks (ECNs) and providers of electronic communication services (ECS). The categories are then further sub-divided into public and private providers.

A electronic communication network is defined in the Communications Act as:

- A transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description.
- Such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals
  - Apparatus comprised in the system.
  - Apparatus used for the switching or routing of the signals.
  - Software and stored data.
  - Other resources, including network elements which are not active.

An 'electronic communications service' means a service of any of the following types, provided by means of an electronic communications network (except in so far as it is a content service):

- An internet access service.
- A number-based interpersonal communications service.
- A service consisting in, or having as its principal feature, the conveyance of signals, such as a transmission service used for machine-to-machine services or for broadcasting.

As the above hopefully illustrates, there is a breadth of regulated activities. Even if a service is provided over the use of another's network (or through an agreement with a communications provider), the entity providing that service is subject to the same regulations and so is considered a communications provider. Such regulations principally are the General Conditions of Entitlement described above.

Ofcom also regulates the allocation of telephone numbers in the UK. The provision of certain premium rate services may require prior permission from another regulator, the Phone-paid Services Authority and there are also various codes of practice which premium rate service providers must adhere to.

## OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Communication providers have general authorisation to operate in the UK and do not require a licence, permit, consent etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States, and was implemented by the UK while it was part of the EU. Unlike some EU Member States, the UK does not require any notification to the telecommunications regulator, Ofcom.

Mobile operators (and other users of spectrum and operators of radio apparatus) do require a licence from Ofcom under the Wireless Telegraphy Act 2006 in order to use spectrum and/or install and operate radiocommunications apparatus forming part of their networks unless an exemption to licensing applies.

## **DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**

From a telecommunications regulatory perspective, there are no requirements for a communications provider to be domiciled in the UK prior to or during the provision of services. Advice should however be sought from a tax perspective.

The UK government is able to scrutinise and intervene in acquisitions made in UK entities under the National Security and Investment Act 2021 where such an acquisition could affect the UK's national security. The National Security and Investment Act 2021 applies to both UK and non-UK investors.

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

The General Conditions of Entitlement require all providers of public electronic communications networks (irrespective of ownership) to 'negotiate' interconnection with other providers of public electronic communication networks with a view to reaching agreement within a reasonable time.

In addition, where Ofcom has found an operator to have SMP following a market review it typically imposes an access-condition obliging the operator to offer interconnection or related services on regulated terms.

Moreover, Ofcom has the power to impose access conditions in the absence of SMP. Since 2011 there has been an increased use of access-related conditions to encourage sustainability, efficient investment in infrastructure, to promote innovation and to ensure 'end-to-end connectivity' within the UK network. Access related conditions may, for example, be imposed by Ofcom on:

- Providers of a subscription service or service accessed using an authorisation card (known as conditional access system).
- Code operators under the Electronic Communications Code.

Ofcom (via an SMP designation) regulates the wholesale rates charged by providers of wholesale call termination, and rates charged for mobile call termination, for termination of phone calls from other networks or their customers. All operators are currently required to provide call termination on regulated terms.

## **TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The General Conditions of Entitlement contain a number of consumer protection specific provisions. A 'consumer' is defined as someone who uses or requests a service for non-business use, which would include someone not contractually bound to the supplier. Certain such provisions are extended to cover services provided to microenterprise or small enterprise customers and not-for-profit customers (unless such customers have expressly agreed otherwise).

Specific obligations relating to consumers include, but are not limited to:

- The requirement to include certain minimum terms in consumer contracts.
- Conditions relating to term and termination of customer contracts.
- The requirement to make certain information available to the customer, such as a description of the services offered and the standard tariffs.
- Availability of number portability.
- Restrictions on sales and marketing activities.

In addition to specific telecommunications laws, regulations and codes, provisions of general consumer law also apply, such as rules concerning unfair consumer terms.

## **REGULATORY TAXES AND FEES**

Licensee's issued with a licence pursuant to the Wireless Telegraphy Act 2006 must pay any applicable licence fees as set by Ofcom under the Wireless Telegraphy Act 2006.

All operators providing of communications networks and communications services under the General Authorisation and with relevant turnover from relevant activities in excess of a set threshold (currently GBP 5,000,000) must pay an 'administrative charge' to Ofcom. The administrative charge applicable to relevant turnover generated in the calendar year ending 31 December 2020 is set at 0.0872% of relevant turnover.

Under the Communications Act 2003, Ofcom has the statutory power to set up a "universal service" fund. The fund would be contributed to by telecommunications operators and used to compensate BT (the Ofcom designated universal service provider) for its costs of delivering universal services. So far, Ofcom has chosen not to do so on the basis that BT gets sufficient benefit from being known as the universal service provider to cover its additional costs; this position may change in the future.

## KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Where Ofcom (acting reasonably) identifies a breach, it will notify the relevant provider and require it to take necessary steps to rectify the breach. Failure to comply with the initial notice may lead to Ofcom issuing an enforcement notice and where the terms of the enforcement notice are not complied with, Ofcom may instigate civil proceedings and levy a fine. In addition, in the most serious of cases, Ofcom may suspend or restrict the providers entitlement to provide a regulated communications service and require that compensation is paid to the providers' customers. Breach of a direction is a criminal offence although providers in receipt of a notice or direction must be given the opportunity to make representations in their defence.

Ofcom has the power to issue enforcement notices to cease persistent misuse of a network or service. Ofcom may also require entities to provide certain information relating to Ofcom's regulation or networks and services.

### KEY CONTACTS



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