[GB] New Communications Act Becomes Law

IRIS 2003-8:1/21

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The Communications Act 2003 has now finished its passage through Parliament and became law on 17 July 2003 (see IRIS 2002-6: 9, IRIS 2002-7: 12 and IRIS 2002-8: 7). The Act is long and complex and makes major changes both to regulatory institutions and to the law relating to broadcasting; the main themes of the legislation are as follows.

First, the Act gives regulatory powers to a new institution, the Office of Communications (Ofcom), to replace five earlier ones, including the Independent Television Commission and the Radio Authority (the Office had already been established in preliminary form by the Office of Communications Act 2002). Ofcom will regulate broadcasting and telecommunications and will be responsible for licensing spectrum management. Its primary duties will be to further the interests of citizens in relation to communications markets, and to further the interests of consumers, where appropriate by promoting competition. It is also subject to a number of secondary duties, both procedural (for example, to have regard to the principles that regulation should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed) and substantive (for example, to promote media literacy). It will take over the work of the existing regulators at the end of 2003.

Ofcom takes over responsibility for telecommunications regulation from the existing Office of Telecommunications; this regulation is now mainly in the form of implementing the new European Union regulatory package for electronic communications (see IRIS 2002-3: 4), but it does have some implications for broadcasting, for example permitting the new regulator to establish must-carry rules to ensure universal availability of the public service broadcasters. The provisions relating to spectrum management permit future auctions and trading in spectrum rights.

The broadcasting provisions are important both for changing the rules on media ownership and for re-casting the regulation of public service broadcasting. In relation to the former, the Act abolishes the former restriction that prevented persons or companies from outside the EEA from holding broadcasting licences. It also lifts the current restriction preventing ownership of Channel 5, the newest public service channel, by a concern holding more than 20% of the newspaper market; this restriction is however maintained for the longer-established Channel

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3. It will become possible for a single company to own all the Channel 3 licences, thus ending its status as a network of regional broadcasters, and joint holding of Channel 3 and Channel 5 licences will be permitted. These provisions clearly increase substantially the scope for broadcasting mergers; at the last minute, provisions were inserted into the Bill to permit the Secretary of State for Trade and Industry to refer such mergers for Ofcom to consider the public interest implications.

In relation to broadcasting regulation, the Act makes provision for the licensing of all "television licensable content services", defined with the intention of excluding from the requirement the Internet and web-casting. Special provision is made for public service broadcasting (applying to Channels 3, 4, and 5 and in part to the BBC). This requires compliance with minimum content standards and rules on advertising and sponsorship (the first tier); observance of quantitative public service requirements such as quotas for independent productions (the second tier); and qualitative public service obligations (the third tier). In relation to the last, the Act sets out the "public service remit" of the broadcasters. Ofcom is to report on the extent to which the overall remit is met; the definition of public service broadcasting is set out in detail for the first time in section 264 of the Act. Each broadcaster is to produce an annual "statement of programme policy" setting out its plans for meeting its remit and reviewing its own performance against them. If Ofcom concludes that the remit has not been met, it may direct the broadcaster to correct the failure; if the direction is not complied with, it may then replace this system of self-regulation with formal regulation through amending the broadcaster's licence. Controversially, this third tier of regulation does not apply to the BBC, which continues to be regulated in this respect by its Board of Governors under the provisions of its Royal Charter and Agreement with the Secretary of State; these are however due for review by 2006 and this may result in new regulatory arrangements.

Communications Act 2003

http://www.legislation.hmso.gov.uk/acts/acts2003/20030021.htm

Explanatory notes to Communications Act 2003

http://www.legislation.hmso.gov.uk/acts/en/2003en21.htm

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