DRAFT STATUTORY INSTRUMENTS

2004 No.

CONTRACTING OUT BROADCASTING

Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004

Made - - - -	*2004*
Coming into force - -	*2004*

Whereas, by virtue of section 1(7) of the Communications Act 2003(**1**), Part 2 of the Deregulation and Contracting Out Act 1994(**2**) is to have effect in relation to the functions conferred on the Office of Communications(**3**) by or under any enactment as if the Office of Communications were an office holder within the meaning of that Part and a power of the Office of Communications to make subordinate legislation were excluded from section 69 of that Act to the extent only that it is exercisable by statutory instrument;

And whereas the Secretary of State has consulted the Office of Communications as required by section 69(3) of the Deregulation and Contracting Out Act 1994;

And whereas section 393(4) of the Communications Act 2003 authorises the Secretary of State to specify by order relevant functions for the purposes of that subsection;

Now therefore the Secretary of State, in exercise of the powers conferred upon her by section 69 and section 77(1) of the Deregulation and Contracting Out Act 1994 and section 393(4) of the Communications Act 2003, hereby makes the following Order, a draft of which has been laid before Parliament in accordance with section 77(2) of the 1994 Act and section 393(11) of the 2003 Act respectively and approved by a resolution of each House of Parliament:

Citation and commencement

1. This Order may be cited as the Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004 and shall come into force on the day after the day on which it is made.

(**1**) 2003 c. 21.
(**2**) 1994 c. 40.
(**3**) The Office of Communications was established by the Office of Communications Act 2002 (c. 11).

Interpretation

2.—(1) In this Order–

"the 1988 Regulations" means the Control of Misleading Advertisements Regulations 1988(**4**);

"the 1990 Act" means the Broadcasting Act 1990(**5**);

"the 1994 Regulations" means the Medicines (Monitoring of Advertising) Regulations 1994(**6**);

"the 1996 Act" means the Broadcasting Act 1996(**7**);

"the 2003 Act" means the Communications Act 2003;

"authorised person" means a person authorised by OFCOM for the purposes of article 3, 6 or 7; and

"employee" in relation to a body corporate, includes any director or other officer of that body.

(2) Except where an indication to the contrary appears, expressions used in this Order have the same meaning in this Order as they do in the 2003 Act.

Contracting out functions relating to advertising in the Communications Act 2003

3.—(1) Subject to article 5, any function relating to advertising may be exercised by, or by employees of, such persons (if any) as may be authorised in that behalf by OFCOM—

(a) either wholly or to such extent as may be specified in the authorisation;

(b) either generally or in such cases as may be so specified; and

(c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.

(2) In this Order, a "function relating to advertising" means a function which is a function of OFCOM and which is—

(a) described in Part 1, 2 or 3 of the Schedule ; and

(b) exercised only for the purposes of or in connection with regulating standards and practice in advertising to be included in television and radio services.

4.—(1) Any function relating to advertising described in Part 2 of the Schedule may be exercised by a person authorised by virtue of article 3 where he considers that a contravention of OFCOM's standards code (in so far as it relates to the regulation of standards and practice in advertising) in relation to a service to which that Part of the Schedule applies can be appropriately remedied by the inclusion of a correction or statement of findings (or both) in that service.

(2) Any function relating to advertising described in Part 3 of the Schedule may be exercised by a person authorised by virtue of article 3 only so far as to determine that no such notice as is mentioned in that Part should be served on the holder of a Broadcasting Act licence or the Welsh Authority.

5. Nothing in this Order allows OFCOM to authorise the exercise by a person of any function relating to advertising for the purposes of or in connection with—

(a) securing the standards objectives referred to in—

(i) section 319(2)(g) of the 2003 Act (prohibition on political advertising),

(ii) section 319(2)(j) of the 2003 Act (prevention of unsuitable sponsorship), and

(**4**) S.I.1988/915. Regulations 8-11 were amended by paragraph 51 of Schedule 20 to the 1990 Act, S.I. 2000/914 and S.I. 2003/3183.
(**5**) 1990 c. 42.
(**6**) S.I. 1994/1993. Regulations 9 and 11 were amended by S.I. 2003/3093.
(**7**) 1996 c. 55.

(iii) section 319(2)(k) of the 2003 Act (prevention of undue discrimination between advertisers);

(b) section 321(4) of the 2003 Act (general responsibility with respect to advertising etc.);

(c) section 321(5) of the 2003 Act (consulting the Secretary of State about advertising etc.);

(d) giving directions pursuant to section 322 of or paragraph 16 of Part 2 of Schedule 12 to the 2003 Act in relation to a licensed service or the Welsh Authority respectively;

(e) reporting to the Secretary of State pursuant to section 325(3) of the 2003 Act on any issues with regard to OFCOM's standards code;

(f) general standards and practice governing the sponsorship of programmes, including the prohibition of any form or method of sponsorship.

Contracting out functions relating to advertising in the Control of Misleading Advertisements Regulations 1988

6.—(1) Any function relating to the control of misleading advertising in the 1988 Regulations may be exercised by, or by employees of, such persons (if any) as may be authorised in that behalf by OFCOM—

(a) either wholly or to such extent as may be specified in the authorisation;

(b) either generally or in such cases as may be so specified; and

(c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.

(2) In this article, a "function relating to the control of misleading advertising" means a function conferred on OFCOM by or under the 1988 Regulations in connection with the following provisions of those Regulations—

(a) regulation 8 (consideration of complaints about misleading or comparative advertisements in a licensed service);

(b) regulation 9 (control by OFCOM of misleading advertisements and comparative advertising);

(c) regulation 10 (consideration of complaints about misleading or comparative advertisements on S4C or S4C Digital); or

(d) regulation 11 (control of misleading advertisements and comparative advertisements on S4C and S4C Digital).

Contracting out functions relating to advertising in the Medicines (Monitoring of Advertising) Regulations 1994

7.—(1) Any function relating to medicines advertising in the 1994 Regulations may be exercised by, or by employees of, such persons (if any) as may be authorised in that behalf by OFCOM—

(a) either wholly or to such extent as may be specified in the authorisation;

(b) either generally or in such cases as may be so specified; and

(c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.

(2) In this article, a "function relating to medicines advertising" means a function conferred on OFCOM by or under the 1994 Regulations in connection with the following provisions of those Regulations—

(a) regulation 9(1) (consideration of complaints about breaches of regulation 9 of the Medicines (Advertising) Regulations 1994(**8**));

(b) regulation 11(1) (directions for preventing the publication or further publication of an advertisement); or

(c) regulation 11(4) (giving and communicating reasons for the decision).

Exercise of functions by an authorised person

8.—(1) Where any provision of the enactments listed in paragraph (3) authorises or requires anything to be done by OFCOM in connection with or for the purposes of a function which may also be exercised by an authorised person, each such enactment shall have effect in any case where that function is so exercised by that person as if a reference to OFCOM included a reference to the authorised person.

(2) In the enactments listed in paragraph (3) any reference to a thing done by OFCOM shall have effect where it is done by an authorised person as though it included a reference to a thing done by that person.

(3) The enactments are—

(a) the 2003 Act;

(b) the 1996 Act;

(c) the 1990 Act;

(d) the 1994 Regulations; and

(e) the 1988 Regulations.

Production and retention of recordings

9.—(1) The modifications made by this article have effect in relation to any time at which an authorisation given by OFCOM by virtue of article 3 has effect.

(2) In relation to any such time, section 69 of the Copyright, Designs and Patents Act 1988(**9**) (no infringement of copyright by use of recordings for certain supervisory purposes) shall have effect as if—

(a) in subsection (2)(d), the reference to section 334(3) of the 2003 Act were a reference to that provision as modified by article 8; and

(b) in subsection (3)—

(i) the reference to the use of any thing mentioned in paragraph (a) or (b) of that subsection by OFCOM in connection with the performance of any function of theirs under the 1990, 1996 or 2003 Act included a reference to the use of that thing by another person in connection with his performance of any such function which he is authorised to perform by virtue of article 3; and

(ii) the reference in paragraph (a) of that subsection to the provision of that thing to OFCOM included a reference to its provision to that other person.

(3) In relation to any such time, paragraph 17 of Schedule 2 to that Act of 1988 (no infringement of rights in performances by use of recordings for certain supervisory purposes) shall have effect as if—

(**8**) S.I. 1994/1932. Regulation 9 was amended by S.I. 1994/3144.

(**9**) 1988 c. 48. Section 69 was amended by paragraph 31 of Schedule 10 to the 1996 Act, by paragraph 91 of Schedule 17 to the 2003 Act and by paragraph 1 of Schedule 19 to that Act; and paragraph 17 of Schedule 2 was amended by paragraph 32 of Schedule 10 to the 1996 Act and by paragraph 93 of Schedule 17 to the 2003 Act.