

Primary Duties

Telecommunications Act 1984

Suppliers meet demand

Supplier finance

Protect consumers

Vulnerable consumers

Maintain and promote effective competition

Enable undertakings to compete effectively

Promote efficiency and economy

Promote research and the development

Encourage major users to establish places of business in the UK

Promote the provision of international transit services

Principal Duties

Other Duties

Duties to fulfil Community obligations

Communications Act 2003

Further the interests of citizens

To further the interests of consumers where appropriate by promoting competition

Desirability of promoting competition

Desirability of promoting and facilitating self-regulation

Desirability of encouraging investment and innovation

Desirability of encouraging the availability and use of high-speed data transfer services

Needs and interests of individuals in respect of use of the electro-magnetic spectrum

Vulnerable consumers

Desirability of preventing crime and disorder

Directions from the Secretary of State

Good regulatory practice

Electronic Communications (Universal Service) Order 2003

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To further the interests of consumers where appropriate by promoting competition

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Desirability of promoting and facilitating self-regulation

Desirability of encouraging investment and innovation

Desirability of encouraging the availability and use of high-speed data transfer services

Needs and interests of individuals in respect of use of the electro-magnetic spectrum

Vulnerable consumers

Desirability of preventing crime and disorder

Directions from the Secretary of State

Good regulatory practice

Wireless Telegraphy Act 2006

Further the interests of citizens

To further the interests of consumers where appropriate by promoting competition

Desirability of promoting competition

Desirability of promoting and facilitating self-regulation

Desirability of encouraging investment and innovation

Desirability of encouraging the availability and use of high-speed data transfer services

Needs and interests of individuals in respect of use of the electro-magnetic spectrum

Vulnerable consumers

Desirability of preventing crime and disorder

Duties when carrying out radio spectrum functions to have regard to:

- availability for wireless telegraphy;
- demand including demand in future;
- desirability of promoting the efficient management and use of spectrum;
- benefits from the use of wireless telegraphy;
- the development of innovative services and competition.

Directions from the Secretary of State

Good regulatory practice

Electronic Communications and Wireless Telegraphy Regulations 2011

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To further the interests of consumers where appropriate by promoting competition

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Directions from the Secretary of State

Good regulatory practice

Digital Economy Act 2017

Further the interests of citizens

To further the interests of consumers where appropriate by promoting competition

Desirability of promoting competition

Desirability of promoting and facilitating self-regulation

Desirability of encouraging investment and innovation

Desirability of encouraging the availability and use of high-speed data transfer services

Needs and interests of individuals in respect of use of the electro-magnetic spectrum

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- the development of innovative services and competition.

Directions from the Secretary of State

Good regulatory practice

Strategic priorities

6 Principles

- promote competition
- contribute to the development of the European internal market
- promote the interests of citizens of the EU
- does not favour one form of network, communications service or associated facility
- encourage the provision of network access and service interoperability to secure efficiency and sustainable competition and the maximum benefit for customers
- encourage compliance for facilitating service interoperability and securing freedom of choice for the customers

Universal service obligations

The EU Communications Package

Framework Directive 2002/21/EC

Universal Service Directive 2002/22/EC

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Universal service obligations

Harmonisation

Promote efficient investment and innovation

Directive 2009/136/EC

Better Regulation Directive 2009/140/EC

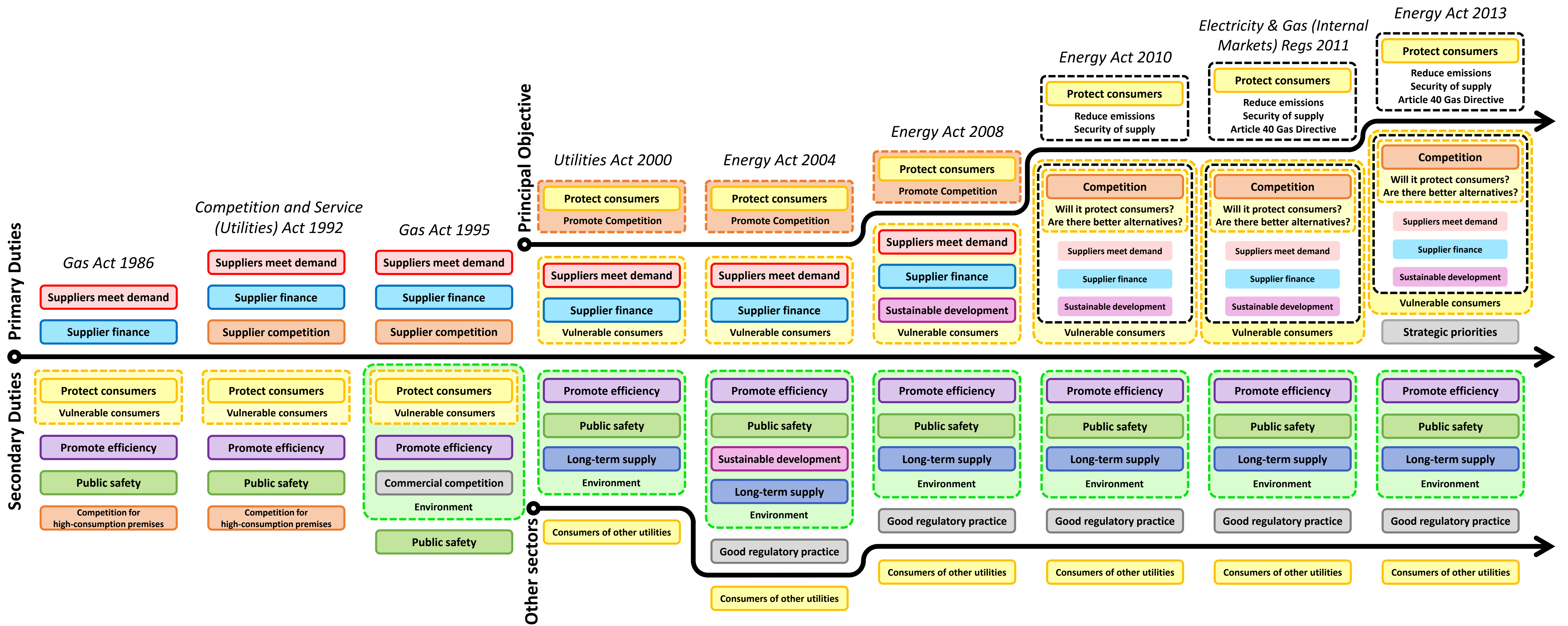
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Universal service obligations

Harmonisation

Promote efficient investment and innovation



Primary Duties

Water Act 1989

- Suppliers meet demand
- Supplier finance

Water Industry Act 1991

- Suppliers meet demand
- Supplier finance

Water Act 2003

- To further consumer objective
- Competition
- Suppliers meet demand
- Licensed activities
- Supplier finance

Water Act 2014

- To further consumer objective
- Competition
- Suppliers meet demand
- Licensed activities
- Supplier finance
- Resilience

Secondary Duties

- Protect consumers
- Promote efficiency
- Facilitate Competition
- Environment

- Protect consumers
- Promote efficiency
- Facilitate Competition
- Environment

- Promote efficiency
- Consumer protection
- Undertaker shows no undue preference
- Sustainable development
- Environment
- Good regulatory practice

- Promote efficiency
- Consumer protection
- Undertaker shows no undue preference
- Sustainable development
- Environment
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Other sectors

- Consumers of other sectors

- Consumers of other sectors

Government strategic priorities

- Social and Environmental Guidance (SEG)

- Statement on strategic priorities and objectives
- Social and Environmental Guidance (SEG)

Water Framework Directive (2000/60/EC)

EU legislation

- Polluter pays principle
- Provide adequate incentives for users to use water resources efficiently
- Secure adequate contribution to the recovery of costs of water services

A. Explanatory notes for Diagram on the Evolution of the Regulator Statutory Duties in Telecoms

1. The existing substantial statutory duties of Ofcom in telecoms

To date, the substantial statutory duties of Ofcom in telecoms are described as follows.

Strategic priorities (SS 2A-2C CA 2003 with amendments made by the DEA 2017): to have regard to the government's statements of strategic priorities relating to telecoms.

Principal duties (S3 (1A-1B) CA 2003): to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. (S3(5)) In performing their duty of furthering the interests of consumers, Ofcom must have regard to their interests in respect of choice, price, quality of service and value for money.

Interpretation of principal duties (S3 (2A-2B) CA 2003): to secure in carrying out the functions (a) the optimal use for wireless telegraphy of the electro-magnetic spectrum and (b) the availability throughout the United Kingdom of a wide range of electronic communications services.

Secondary duties (3(4B-4M) CA 2003): to have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances:

- the desirability of promoting competition in relevant markets;
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- the desirability of encouraging investment and innovation in relevant markets;
- the desirability of encouraging the availability and use of high-speed data transfer services throughout the United Kingdom;
- the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
- the vulnerability of children and others whose circumstances appear to put them in need of special protection;
- the needs of persons with disabilities, the elderly, and those on low incomes;
- the opinions of consumers in relevant markets and of members of the public generally;
- persons in different parts of the UK, ethnic communities in the UK, and persons living in rural and urban areas;
- the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.

Principles of best regulatory practice (S3 (3) CA2003): Ofcom must have regard to the principles that regulatory activities should be transparent, accountable, proportionate, targeted and consistent, and to any other principles which appear to Ofcom to represent best regulatory practice.

Directions in respect of networks and spectrum functions (S5 CA 2003): to carry out Ofcom's functions in accordance with general or specific directions as may be given to them by the Secretary of State in the interests of national security, or relations with the government of a country or territory outside the United Kingdom or for the purpose of securing compliance with international obligations of the United Kingdom, or in the interests of the safety of the public or of public health.

Duty to encourage availability of easily usable apparatus (S10 CA 2003): to encourage others to secure (a) that domestic electronic communications apparatus is developed which is capable of being used with ease, and without modification, by the widest possible range of individuals (including those with disabilities); and (b) that domestic electronic communications apparatus which is capable of being so used is as widely available as possible for acquisition by those wishing to use it.

Duties under EU law (incorporated into S4 implementing Art. 8 Framework Directive; Art 5(1) Access Directive and Art 7(3) Authorisation Directive, and S4A implementing Directive 2009/140/EC of the

European Parliament and of the Council of 25 November 2009 and Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009):

- To promote competition.
- To secure that Ofcom's activities contribute to the development of the European internal market.
- To promote the interests of all persons who are citizens of the EU.
- To take account of the desirability of Ofcom's carrying out their functions in a manner which, so far as practicable, does not favour one form of electronic communications network, electronic communications service or associated facility; or one means of providing or making available such a network, service or facility, over another.
- To encourage the provision of network access and service interoperability.
- To encourage compliance with international standards to the extent necessary for facilitating service interoperability; and securing freedom of choice for customers.
- To take account of European Commission recommendations for harmonisation.

2. The UK and EU Policy and Legislation on Statutory Duties of the regulator for the telecom industry

The statutory duties for Ofcom have emerged from the UK and EU legislation.

The Telecommunications Act 1984 having established the mechanism for privatisation of BT, set the statutory duties of the Director General of Telecommunications (the telecommunications regulator) as the regulator of the telecom industry. Later, the regulatory framework has been modified by a number of subsequent acts.¹ However, the substantive statutory duties in respect of telecoms have been amended in the main by the Office of Communications Act 2002 (OCA 2002), the Communications Act 2003 (CA 2003), the Electronic Communications (Universal Service) Order 2003, the Wireless Telegraphy Act 2006, the Digital Economy Act 2017 (DEA 2017), the Electronic Communications and Wireless Telegraphy Regulations 2011 implementing Directives 2009/136/EC and 2009/140/EC.

The EU Communications Package has been implemented by the CA 2003, namely:

- Framework Directive (2002/21/EC).
- Authorisation Directive (2002/20/EC).
- Access Directive (2002/19/EC).
- Universal Service Directive (2002/22/EC).

Better Regulation Directive (2009/140/EC), the Citizens' Rights Directive 2009/136/EC and the BEREC Regulation (1211/2009) were implemented in the UK by the Electronic Communications and Wireless Telegraphy Regulations 2011.

European Electronic Communications Code (EECC) incorporated the relevant directives into a single provision. Some of the duties are set out in the Roaming Regulation (531/2012), as amended by the Regulation on open internet access (2015/2120); Regulation on wholesale roaming charges (2017/920) and Directive on measures to reduce the cost of deploying high-speed electronic communications networks (2014/61/EU).

3. The Telecommunications Act 1984

3.1. The Telecommunication Act 1984 introduced the duties for the Regulator. Section 3(1) provided that its primary duties were to secure that telecommunication services satisfy all reasonable demands for them throughout the United Kingdom (S3 (1A)) and that any person by whom any such services fall to be provided is able to finance the provision of those services (S3 (1B)).

3.2. Subject to the above primary duties, the Secretary of State and The Director General of Telecommunications were also under secondary duties to promote interests of users (including, in particular, those who are disabled or of pensionable age) (S3 (2A)); maintain and promote effective

¹ See Broadcasting Acts 1990 and 1996, Competition Act 1998, Enterprise Act 2002 (as amended by CA 2003), Digital Economy Act 2010 (DEA 2010) Postal Services Act 2011, Enterprise and Regulatory Reform Act 2013, Competition Act 1998 (Concurrency) Regulations 2014, Communications (Access to Infrastructure) Regulations 2016.

competition (S3 (2B)); to promote efficiency and economy (S3 (2C)); to promote research and the development and use of new techniques (S3 (2D)); to encourage major users of telecommunication services whose places of business are outside the United Kingdom to establish places of business in the United Kingdom (S3 (2E)); to promote the provision of international transit services by persons providing telecommunication services in the United Kingdom (S3 (2F)); to enable persons providing telecommunications services in the United Kingdom to compete effectively in the provision of such services outside the United Kingdom (S3 (2G)) and persons producing telecommunication apparatus in the United Kingdom to compete effectively in the supply of such apparatus both in and outside the United Kingdom (S3 (2H)).

4. Office of Communications Act 2002

The Act introduced the Office of Communications and set out the single function of Ofcom to prepare to assume functions at a later stage (S2)

5. The Communications Act 2003

The Communication Act 2003 (CA 2003) superseded the Telecommunications Act 1984.

5.1. Principal Duties

There are two principal duties set in S3 (1): to further the interests of citizens in relation to communications matters (S3 (1A)) and to further the interests of consumers in relevant markets, where appropriate by promoting competition (S3 (1B)). These duties in respect of telecoms included in particular securing the optimal use for wireless telegraphy of the electro-magnetic spectrum and the availability throughout the United Kingdom of a wide range of electronic communications services. Sections 10, 11, 14-16, 52-55 interpreted the duty to further the interests of citizens.

5.2. Other duties

Ofcom must have regard in all cases to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (S3 (3A)) and other principles appearing to represent the best regulatory practice (S (3B)).

In performing duties in the telecom sector, Ofcom must also have regard to such of the following as appear to them to be relevant in the circumstances (S3 (4)):

- (b) the desirability of promoting competition in relevant markets;
- (c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- (d) the desirability of encouraging investment and innovation in relevant markets;
- (e) the desirability of encouraging the availability and use of high-speed data transfer services throughout the United Kingdom;
- (f) the different needs and interests so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it; the needs of vulnerable groups of citizens (children (H)), persons with disabilities, of the elderly and of those on low incomes (G), the opinions of consumers in relevant markets and of members of the public generally (K) and the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas (I)
- (j) the desirability of preventing crime and disorder;

5.3. Duties for the purpose of fulfilling Community obligations

Section 4 CA 2003, implemented articles 8 of Framework Directive, in particular, to act in accordance with the six Community requirements:

- to promote competition (S4 (3));
- to secure that Ofcom activities contribute to the development of the European internal market (S4 (4));
- to promote the interests of all persons who are citizens of the European Union (S4 (5));
- to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour one form of electronic communications network, electronic

communications service or associated facility or one means of providing or making available such a network, service or facility, over another (S4 (6));

- to encourage the provision of network access and service interoperability (S4 (7)) to secure efficiency and sustainable competition and the maximum benefit for the persons who are customers;
- to encourage compliance with the standards of Framework Directive as is necessary for facilitating service interoperability and securing freedom of choice for the customers of communications providers (S4 (9)).

5.4. Directions in respect of networks and spectrum functions

Under Section 5, Ofcom must carry out functions in accordance with directions given to them by the Secretary of State. The Secretary of State's has a power to give directions in the interests of national security; in the interests of relations with the government of a country or territory outside the United Kingdom; for the purpose of securing compliance with international obligations of the United Kingdom and in the interests of the safety of the public or of public health.

6. The Electronic Communications (Universal Service) Order 2003

This Order sets out the extent to which the things falling within section 65(2) of the Communication Act must be made available or supplied throughout the United Kingdom to comply with the Universal Service Directive 2002/22/EC, namely:

- electronic communications networks and electronic communications services;
- facilities capable of being made available as part of or in connection with an electronic communications service;
- directories capable of being used in connection with the use of an electronic communications network or electronic communications service;
- directory enquiry facilities capable of being used for purposes connected with the use of such a network or service; and
- particular methods of billing for electronic communications services or of accepting payment for them.

Ofcom supervises **the universal service obligations** by adopting appropriate measures to secure compliance with the obligations contained in this Order and must have regard to the guidance on the pricing of the things when setting universal service conditions under section 67 of the Act.

7. Wireless Telegraphy Act 2006

The Act introduces duties of Ofcom when carrying out radio spectrum functions: they must have regard to

- the extent to which the electromagnetic spectrum is available for use, or further use, for wireless telegraphy (S3 (1A));
- the demand for use of the spectrum for wireless telegraphy (S3 (1B)) including the demand that is likely to arise in future (S3 (1C));
- to the desirability of promoting (S3 (2)) the efficient management and use of the part of the electromagnetic spectrum; the economic and other benefits that may arise from the use of wireless telegraphy; the development of innovative services and competition in the provision of electronic communications services.

8. The Electronic Communications and Wireless Telegraphy Regulations 2011

The Regulations implemented Directive 2009/136/EC setting out the duty to take account of European Commission recommendations for harmonisation. The Act also inserted a duty to promote efficient investment and innovation in infrastructure derived from the Better Regulation Directive 2009/140/EC

9. Digital Economy Act 2017

The Act introduced the Government's strategic priorities and Ofcom's duty to have regard to the statements of strategic priorities relating to telecoms and radio spectrum management (Digital Economy Act 2017 S 98(1)).

B. Explanatory notes for Diagram on the Evolution of Ofgem Statutory Duties

1. The UK and EU Policy and Legislation on Statutory Duties of the regulator for the energy industry

The statutory duties for Ofgem have been introduced by the UK and EU legislation. Although the regulatory framework of the energy industry has been modified by a number of subsequent acts,² the substantial statutory duties have been amended in the main by the Gas Act 1986; Competition and Service (Utilities) Act 1992; Gas Act 1995; Utilities Act 2000; Energy Act 2004; Energy Act 2008; Energy Act 2010; Electricity & Gas (Internal Markets) Regulations 2011; Energy Act 2013.

Ofgem also has EU-derived duties, particularly, from The European Union's Third Energy Package (Directive 2009/72/EC; Directive 2009/73/EC; Regulation (EC) No 714/2009; Regulation (EC) No 715/2009' Regulation (EC) No 713/2009) which implemented and addressed matters arising out of or related to the Package.

2. The Gas Act 1986

The Gas Act 1986 set the statutory duties for the Secretary of State and the Director General of Gas Supply.

2.1. Primary duties: to secure that gas suppliers meet reasonable demand and were able to finance the provision of gas supply services (S4(1)).

2.2. Secondary duties: to protect the interests of consumers; to promote efficiency and economy; to protect the public from dangers arising from the transmission or distribution of gas; to enable persons to compete effectively in the supply of gas. (S4(2)).

3. Competition and Service (Utilities) Act 1992

The act imposes an additional primary duty to secure effective competition to gas suppliers in relation to conveyance/storage of gas.

4. Gas Act 1995

The Act imposes further obligations.

4.1. Primary duty: to secure effective competition in all licensable activities (S1)

4.2. Secondary duties: (a) to secure effective competition in the conveyance of gas to new areas, in the supplying, laying of service pipes and in other activities and (b) to take into account, in exercising those functions, the effect on the environment.

5. Utilities Act 2000

The Act revises the secondary duties for Ofgem and sets that **the new principal objective** for the Regulator is to protect the interests of consumers, wherever appropriate by promoting effective competition (S9).

The Act requires, that in pursuance of the principal objective, Ofgem 'shall have regard to' the interests of vulnerable consumers (ie, those who are disabled or chronically sick, of pensionable age, and those with low incomes) and the interests of those residing in rural areas (S9).

6. Energy Act 2004

² Gas Act 1986 (GA 1986); Electricity Act 1989 (EA 1989); Utilities Act 2000 (UA 2000); Competition Act 1998 (CA 1998); Enterprise Act 2002 (EA 2002); Energy Acts (EA) 2004, 2008, 2010, 2011, 2013, 2016; Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008; Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2010; Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2010; Electricity and Gas (Internal Markets) Regulations 2011; Enterprise and Regulatory Reform Act 2013 (ERRA 2013); Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013; Competition Act 1998 (Concurrency) Regulations 2014 (the Concurrency Regulations); Electricity Capacity Regulations 2014 (ECR 2014); Domestic Gas and Electricity (Tariff Cap) Act 2018; Network and Information Systems Regulations 2018 (NIS Regulations 2018)

The Act imposes additional secondary duty to have regards to the need the achieve sustainable development and best regulatory practice.

7. Energy Act 2008

The Act imposes the additional primary duty to have regard to the need to achieve sustainable development and clarifies the scope of the duty to protect consumers ('existing and future consumers').

8. Energy Act 2010

The Act clarifies that, in furthering the principal objective, the Regulator should consider whether there are means of protecting the consumer interest other than by promoting competition (S 16).

The Act inserts that the interests of existing and future consumers are to be taken as whole, including their interests in the reduction of electricity/gas-supply emissions of targeted greenhouse gases; and their interests in the security of the supply of gas/electricity to them (S 16).

9. Electricity & Gas (Internal Markets) Regulations 2011

The Act implements the EU third energy liberalisation package, particularly, incorporating 8 general objectives set out in the Third Package and thus amending Ofgem's principal objective.

10. Energy Act 2013

Part 5 of the Act introduces a strategy and policy statement to replace guidance for the Authority on social and environmental matters. This document sets out the Government's strategic priorities for the energy sector, describe the roles and responsibilities of various players of the energy sector and describe policy outcomes which are to be achieved by the regulator.

Ofgem must carry out their functions in a manner which is best calculated to further the delivery of the policy outcomes in the statement (S132 (2)), subject to the application of the principal objective duty (S132 (3)).

C. Explanatory notes for Diagram on the Evolution of Ofwat Statutory Duties

1. The UK and EU Policy and Legislation on Statutory Duties of the regulator for the water industry

The statutory duties for Ofwat have been introduced by the UK and EU legislation. The Water Act 1989 having established the mechanism for privatisation set the statutory duties of the Director General of Water Services as the economic regulator of the water industry. Although the regulatory framework of the water industry has been modified by a number of subsequent acts,³ the substantial statutory duties have been amended in the main by the Water Industry Act 1991, Water Act 2003 and Water Act 2014.

Ofwat also has EU-derived duties since most of the UK's recent environmental legislation originates in the European Union,⁴ particularly, from the Water Framework Directive (2000/60/EC). The Framework Directive is supported by a considerable body of the EU legislation regulating the water industry, for example, The Marine Strategy Framework Directive, The Floods Directive, The Drinking Water Directive, The Bathing Water Directive (76/160/EEC and 2006/7/EC), The Sewage Sludge Directive (86/27/EEC), The Urban Waste Water Treatment Directive (91/271/EEC), Groundwater Directives (80/68/EEC and 2006/118/EC), Nitrates Directive (2003/35/EC), Freshwater Fish Directive (2006/44/EC), Shellfish Directive (2006/113/EC) However, they do not affect the scope of Ofwat statutory duties directly.

Article 9 of the Water Framework Directive (2000/60/EC) requires member states to ensure that water prices allow for the adequate cost recovery of water services, including environmental and resource costs; the main water uses (households, industry and agriculture) adequately contribute to the recovery of costs of water services in line with the polluter pays principle; water-pricing policies 'provide adequate incentives for users to use water resources efficiently and thereby contribute to the environmental objectives' of the Directive. The member states are allowed to take into account social and economic considerations when establishing the level of cost recovery for different users and to distribute the costs within the economic sector flexibly.⁵

2. The Water Act 1989

2.1. The Water Act 1989 introduced the duties for the Director General of Water Services. Section 7 (2) provided that **their primary duties** are to secure that the functions of a water undertaker and a sewerage undertaker are adequately carried out as respects every area of England and Wales (S7 (2A))⁶ and undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of the functions of such undertakers (S7 (2B)).⁷

2.2. Subject to the above primary duties, the Secretary of State and the Director General of Water Services were also under **secondary duties** to protect consumers (S7 (3A - C)); to promote economy and efficiency (S7 (3D)) and to facilitate effective competition (S7 (3E)).

The duty to protect consumers included protection of the interests of customers and potential customers in rural areas from undue discrimination

2.3. **Other duties.** In formulating or considering any proposals relating to the functions of any relevant body the Secretary of State and the Director had to have regard to environmental duties (S8) including environmental duties with respect to sites of special interest (S9).

³ See Water Industry Act 1991; Competition and Service (Utilities) Act 1992; Environment Act 1995; Competition Act 1998; Water Industry Act 1999; Enterprise Act 2002; Water Act 2003; Flood and Water Management Act 2010; Water Act 2014

⁴ <https://www.ofwat.gov.uk/regulated-companies/ofwat-industry-overview/legislation>

⁵ The Walker review of charging for household water and sewerage services (2009) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69459/walker-review-final-report.pdf

⁶ Further – 'suppliers meet demand'

⁷ Further – 'supplier finance'

Environmental duties included having regard to the desirability of preserving for the public any freedom of access to places of natural beauty (S8 (2A), of maintaining the availability to the public of any facility for visiting or inspecting (S8 (2B)). They also had a duty before doing anything which causes navigation which is subject to the control to obtain the consent of the relevant authority and to take such steps as are reasonably practicable (S8 (3A)) and consistent with the purposes of the enactments relating to the functions of that body (S8 (3B)).

The Secretary of State and the Director were also under a duty to promote the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters (S8 (4A); the conservation of flora and fauna which are dependent on an aquatic environment (S8 (4B); and the use of such waters and land for recreational purposes (S8 (4C)).

Having determined what steps to take in the performance of any environmental duty a relevant body also had a duty to take into account the needs of persons who are chronically sick or disabled (S8 (5)).

The Water Industry Act 1991 replaced the Water Act 1989. Water Consolidation (Consequential Provisions) Act 1991 repealed sections 7-9 of Water Act 1989.

3. Water Industry Act 1991

3.1. The Act reproduced the primary and secondary duties for the Regulator from Water Act 1989. The primary duties (S2 (2)) remained unchanged and included the duties to ensure that undertakers meet demand (S2 (2A)) and that they secure reasonable returns on their capital to finance the proper carrying out of the functions (S2 (2B)).

3.2. The secondary duties (S2 (3, 4)) also were transferred from the Water Act 1989 with a slight rewording of consumer protection duties, such as the duty to promote economy and efficiency, to secure that there is no undue discrimination, to secure that benefits of the proceeds of any disposal of protected land could be secured for consumers and that consumers are also protected as respects any activities of undertakers.

3.3. General environmental and recreational duties (S3) and environmental duties with respect to sites of special interest (S4) (other duties) remained unchanged.

4. Water Act (WA) 2003

Water Act (WA) 2003 altered both the hierarchy of duties and their scope. The Act amended the Water Industry Act 1991 and introduced a Regulatory Authority to replace the existing individual Director General 'to strengthen regulatory certainty'.⁸

4.1. First, S40 of Water Act 2003 sets out **the duty to have regard to any Social and Environmental Guidance (SEG)**, issued by the National Assembly for Wales with respect to appointment areas which are wholly or mainly in Wales and the Secretary of State with respect to other appointment areas, in exercising and performing the powers and duties.

Second, the Act extends **the scope of the primary duties** with the duties to further the consumer objective (S3 of WA2003 introducing S2A (a) for WIA) and to secure that the activities authorised by the licence of a licensed water supplier and any statutory functions imposed on it in consequence of the licence are properly carried out (S3 of WA2003 introducing S2A (d) for WIA). The consumer objective (S2A) means to protect the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the provision of water and sewerage services (S2B).

The WA 2003 also specifies the groups of vulnerable consumers in S39 (2C) ((a) individuals who are disabled or chronically sick; (b) individuals of pensionable age; (c) individuals with low incomes; (d) individuals

⁸ 17 <https://publications.parliament.uk/pa/cm200203/cmbills/149/en/03149x--.htm>

residing in rural areas; and (e) customers, of companies whose premises are not eligible to be supplied by a licensed water supplier), and introduced the interests of consumers from other sectors in S39 (2E) where their interests are affected. Thus, in 2003, consumer protection was prioritised and clarified.

4.2. **The secondary duties** (S4 WA2003) were changed accordingly. In addition to the duties to promote economy and efficiency, to secure that there is no undue discrimination, to secure that benefits of the proceeds of any disposal of protected land could be secured for consumers and that consumers are also protected as respects any activities of undertakers the duty to contribute to the achievement of sustainable development was introduced.

4.3. In exercising any of the powers or performing any of the duties, the regulator has to have regard to the principles of best regulatory practice (S4 (4))

Beyond the duty to contribute to the achievement of sustainable development, the extent of the regulators' environmental duties has not expanded significantly.

5. Water Act 2014

5.1. S24 inserted the new sections 2A and 2B to WIA 1991 establishing that Ofwat must carry out its functions in accordance with **the statement on strategic priorities and objectives** for Ofwat published by the Secretary of State. Section 24 replaced Section 2A of the WIA with a new power:⁹ Subsection 3 of Section 24 set out the duty for the Secretary of State and the Welsh Ministers to set out strategic priorities and objectives for the Regulator on the matters previously covered by the Social and Environmental Guidance. Introduction of a single statement of the Government's priorities was aimed at consolidation of the SEG and the Strategic Policy Statement (SPS) incorporating SEG under a single power.¹⁰

While under section 2A WA 2003 Ofwat **must have regard to SEG**, Ofwat **must carry out its relevant functions in accordance with the statement** published by the Secretary of State¹¹ since WA 2014 has been enacted.

5.2. The Act incorporates **a new primary duty** to secure resilience (S2 amending Section 2 of the Water Industry Act 1991). Subsection 3 (2DA) defines the resilience objective as a duty is to secure the long-term resilience of water supply and sewerage systems. It refers specifically to environmental pressures, population growth and changes in consumer behaviour and the need 'to ensure that undertakers take action to make water and sewerage services to consumers resilient for the long term'.¹²

5.3. S23 inserted a duty to secure that 'undertakers do not show undue preference or undue discrimination in their dealings with other undertakers and licensees'¹³ **as a secondary duty** (before that, it was a part of the duty to ensure that the interests of customers are protected as respects the fixing and recovery by that company of water and drainage charges – S2 (3A) WIA 1991).

Explanatory notes for WA 2014 point out that an undertaker shows undue preference 'where it prioritises enquiries from its own end-user customers or from its subsidiary licensee over those from another licensee or undertaker'¹⁴ and undue discrimination when it places 'different information requirements on unassociated licensees or other undertakers that it would not normally require from its own retail business or subsidiary licensee'¹⁵ gaining a competitive advantage over others undertakers operating in the same market.

⁹ Explanatory Notes <http://www.legislation.gov.uk/ukpga/2014/21/notes/division/5/1/3/1/3>

¹⁰ 142 Explanatory Notes <http://www.legislation.gov.uk/ukpga/2014/21/notes/division/5/1/3/1/3>

¹¹ 141 Explanatory Notes <http://www.legislation.gov.uk/ukpga/2014/21/notes/division/5/1/3/1/3>

¹² 136 http://www.legislation.gov.uk/ukpga/2014/21/pdfs/ukpgaen_20140021_en.pdf

¹³ 139 http://www.legislation.gov.uk/ukpga/2014/21/pdfs/ukpgaen_20140021_en.pdf

¹⁴ 140 http://www.legislation.gov.uk/ukpga/2014/21/pdfs/ukpgaen_20140021_en.pdf

¹⁵ 140 http://www.legislation.gov.uk/ukpga/2014/21/pdfs/ukpgaen_20140021_en.pdf

6. Duties under European legislation

Article 9 of the Water Framework Directive (2000/60/EC) sets out that the Regulator takes account of the polluter pays principle, i.e. that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment.¹⁶ Also, the regulator secures that:

- water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive
- the main water uses (households, industry and agriculture) adequately contribute to the recovery of costs of water services, proportionally to their contributions to the pressures imposed on aquatic ecosystems in line with the polluter pays principle

¹⁶ Principle 16 The Rio Declaration On Environment and Development (1992); OECD Water, growth and finance POLICY PERSPECTIVES <https://www.oecd.org/environment/resources/Water-Growth-and-Finance-policy-perspectives.pdf>