



Communications Act 2003

2003 CHAPTER 21

PART 3

TELEVISION AND RADIO SERVICES

CHAPTER 2

REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES

Channels 3 and 5

214 Digital Channel 3 and Channel 5 licences

- (1) This section applies to the grant by OFCOM, at any time on or after the television transfer date, of a licence under Part 1 of the 1990 Act to provide a Channel 3 service or to provide Channel 5.
- (2) The licence must—
 - (a) be a licence to provide the licensed service with a view to its being broadcast in digital form; and
 - (b) contain such condition (if any) requiring the provider of the service to ensure that the whole or a part of the service is also provided for broadcasting in analogue form as OFCOM consider appropriate.
- (3) The conditions included in a licence by virtue of subsection (2)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.
- (4) Where the licence contains a condition falling within subsection (2)(b), it must also contain a condition that—
 - (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
 - (b) the times at which they are broadcast,

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are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.

- (5) The licence—
- (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
 - (b) shall be renewable, on one or more occasions, under section 216.
- (6) For the purposes of subsection (5) a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
 - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (7) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (8) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of the following—
- (a) charges on persons in respect of their reception in the United Kingdom of the licensed service;
 - (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in the licensed service; and
 - (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of the licensed service as is provided in digital form.
- (9) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (8).

215 Replacement of existing Channel 3 and Channel 5 licences

- (1) It shall be the duty of OFCOM to make an offer under this section to every person who, when the offer is made, is the holder of a licence (an “existing licence”)—
- (a) to provide a Channel 3 service; or
 - (b) to provide Channel 5.
- (2) The offer made to a person under this section—
- (a) must be an offer to exchange his existing licence for a replacement licence; and
 - (b) must be made as soon as practicable after the television transfer date.
- (3) The replacement licence offered must be one granted in accordance with the provisions of—
- (a) Part 1 of the 1990 Act; and
 - (b) section 214 of this Act;
- but sections 15 to 17A of the 1990 Act (award of licences) are not to apply in the case of the replacement licence.

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- (4) Subject to subsection (5), where OFCOM make an offer under this section to a person, the service which they are proposing to license by the replacement licence must be a service which—
 - (a) is provided with a view to its being broadcast in digital form; but
 - (b) subject to that and to any requirements of section 214, appears to OFCOM to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence.
- (5) An offer under this section may, to such extent as OFCOM think fit, propose the grant of a licence to provide a service for an area or at times which, though substantially the same as in the case of the existing licence, are not identical.
- (6) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of—
 - (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
 - (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.
- (7) That offer must also propose the conditions for allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.
- (8) An offer under this section must set out—
 - (a) the terms of the proposed replacement licence;
 - (b) the conditions on which OFCOM are proposing to grant the replacement licence;
 - (c) the period for which the offer is open;
 - (d) the date on which the proposed replacement licence will be granted if the offer is accepted;
 - (e) the time as from which it is proposed that that licence will take effect if the offer is accepted; and
 - (f) the time from which the existing licence will cease to have effect if the offer is not accepted.
- (9) The times set out under subsection (8) must—
 - (a) in the case of the time set out under paragraph (e), be in the period of twelve months beginning with the television transfer date; and
 - (b) in the case of the time set out under paragraph (f), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (10) Where a person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him—
 - (a) he is entitled, on the date set out in the offer, to be granted, in accordance with Part 1 of the 1990 Act and section 214 of this Act, a replacement licence under that Part in the terms, and on the conditions, so set out;

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- (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct; and
 - (c) the service which he is authorised to provide by the replacement licence, so far as it is provided in digital form, shall be a qualifying service for the purposes of Part 1 of the 1996 Act.
- (11) Where the person to whom an offer has been made under this section—
- (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
 - (b) rejects the offer before the end of that period,
- the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (8)(f).
- (12) In this section “qualifying revenue” has the same meaning as in section 19 of the 1990 Act.

216 Renewal of Channel 3 and 5 licences

- (1) The holder of—
- (a) a licence to provide a Channel 3 service, or
 - (b) a licence to provide Channel 5,
- may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.
- (2) An application for renewal may only be made in the period which—
- (a) begins four years before the end of the current licensing period; and
 - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.
- (3) A determination for the purposes of subsection (2)(b)—
- (a) must be made at least one year before the day determined; and
 - (b) must be notified by OFCOM to every person who, at the time of the determination, holds a licence in respect of which there is right to apply for renewal under this section.
- (4) Where OFCOM receive an application under this section for the renewal of a licence, they must—
- (a) decide whether they will be renewing the licence;
 - (b) if they decide that they will be, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
 - (c) notify the applicant of their decision and determination.
- (5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if references to the award of a licence were references to its renewal.
- (6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—

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- (a) the public service remit for the licensed service;
 - (b) programming quotas;
 - (c) news and current affairs programmes; and
 - (d) programme production and regional programming.
- (7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in—
- (a) the area for which it would be provided; or
 - (b) the times of the day, or days of the week, between or on which it would be provided.
- (8) In all cases in which—
- (a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and
 - (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal,
- they must grant the renewal as soon as reasonably practicable.
- (9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.
- (10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions, subject only to such modifications as are required to give effect, in accordance with the determination under subsection (4)(b), to the requirements imposed by section 217(4).
- (11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—
- (a) to make a decision or determination, or
 - (b) to take any other step under this section,
- at any time after an order under section 230 has come into force preventing the renewal of the licence.
- (12) For the purposes of this section a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
 - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (13) In this section “tender notice” means a notice under section 15 of the 1990 Act.

217 Financial terms of licence renewed under s. 216

- (1) The determination under section 216(4)(b) must comprise—
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period; and
 - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which the holder of that licence will be required by those conditions to pay to OFCOM.

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- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 15 of the 1990 Act.
- (3) For the purposes of subsection (1)(b)—
 - (a) different percentages may be determined for different accounting periods; and
 - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) The renewed licence is required, as renewed, to include conditions requiring the licence holder to pay to OFCOM—
 - (a) in addition to any fees required to be paid by virtue of section 4(1)(b) of the 1990 Act, but
 - (b) instead of the amounts payable under the corresponding provision applicable under the conditions of the licence to the period before the renewal takes effect,the amounts specified in subsection (5).
- (5) Those amounts are—
 - (a) in respect of the first complete calendar year falling within the renewal period, the amount determined under subsection (1)(a);
 - (b) in respect of each subsequent year falling wholly or partly within the renewal period, that amount increased by the appropriate percentage; and
 - (c) in respect of each accounting period of the licence holder falling within the renewal period, an amount representing a specified percentage of qualifying revenue for that accounting period.
- (6) The percentage specified for the purposes of subsection (5)(c) in respect of an accounting period must be the amount determined for that period under subsection (1)(b).
- (7) In this section—
 - “the appropriate percentage” and “qualifying revenue” each has the same meaning as in section 19 of the 1990 Act; and
 - “renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.