



# Wireless Telegraphy Act 2006

## 2006 CHAPTER 36

### PART 3

#### REGULATION OF APPARATUS

##### *Undue interference*

#### **54 Regulations about use and sale etc of apparatus**

- (1) OFCOM may make regulations prescribing the requirements to be complied with in the case of apparatus specified in the regulations, if the apparatus is to be used.
- (2) OFCOM may make regulations prescribing the requirements to be complied with in the case of apparatus specified in the regulations, if the apparatus is to be—
  - (a) sold otherwise than for export,
  - (b) offered or advertised for sale otherwise than for export, or
  - (c) let on hire, or offered or advertised for letting on hire,by a person who manufactures, assembles or imports such apparatus in the course of business.
- (3) The requirements prescribed under subsection (1) or (2) are to be such requirements as OFCOM think fit for the purpose of ensuring that the use of the apparatus does not cause undue interference with wireless telegraphy.
- (4) In particular, the requirements may include—
  - (a) requirements as to the maximum intensity of electromagnetic energy of specified frequencies that may be radiated in any direction from the apparatus while it is being used;
  - (b) in the case of apparatus the power for which is supplied from electric lines, requirements as to the maximum electromagnetic energy of specified frequencies that may be injected into those lines by the apparatus.

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- (5) The apparatus which may be specified in the regulations under subsection (1) or (2) is apparatus which generates, or is designed to generate, or is liable to generate fortuitously, electromagnetic energy at frequencies not exceeding 3,000 gigahertz.
- (6) In a case where apparatus does not comply with the requirements applicable to it under regulations made under subsection (1) or (2), a person does not act unlawfully only because—
  - (a) he uses the apparatus, or
  - (b) he sells it, or offers or advertises it for sale, or lets it on hire or offers or advertises it for letting on hire.

But the non-compliance is a ground for the giving of a notice under section 55 or 56.

- (7) The approval of the Secretary of State is required for the making by OFCOM of regulations under this section.
- (8) A statutory instrument containing regulations made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **55 Enforcement: use of apparatus**

- (1) This section applies where, in the opinion of OFCOM—
  - (a) apparatus does not comply with the requirements applicable to it under regulations made under section 54(1); and
  - (b) the first or second condition is satisfied in relation to the apparatus.
- (2) The first condition is that the use of the apparatus is likely to cause undue interference with wireless telegraphy used—
  - (a) for the purposes of a safety of life service; or
  - (b) for a purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend.
- (3) The second condition is that—
  - (a) the use of the apparatus is likely to cause undue interference with wireless telegraphy other than wireless telegraphy falling within subsection (2);
  - (b) the use of the apparatus in fact has caused, or is causing, such interference; and
  - (c) the case is one where OFCOM consider that all reasonable steps to minimise interference have been taken in relation to the wireless telegraphy station or wireless telegraphy apparatus receiving the telegraphy interfered with.
- (4) OFCOM may give a notice in writing to the person in possession of the apparatus—
  - (a) prohibiting the use of the apparatus after a date fixed by the notice, whether by the person to whom the notice is given or otherwise; or
  - (b) (if OFCOM think fit so to frame the notice) prohibiting the use of the apparatus after a date fixed by the notice except in such way, at such times and in such circumstances as the notice may specify.
- (5) The date fixed by a notice under subsection (4) must be not less than 28 days from the date on which the notice is given.
- (6) But if OFCOM are satisfied that the use of the apparatus in question is likely to cause such undue interference as is described in subsection (2), the date fixed by a notice under subsection (4) may be the date on which the notice is given.

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- (7) A notice under subsection (4) may be revoked or varied by a subsequent notice in writing from OFCOM given to the person who is then in possession of the apparatus.
- (8) Where a notice under subsection (7) has the effect of imposing additional restrictions on the use of the apparatus, the provisions of this section about the coming into force of notices apply in relation to the notice as if it were a notice under subsection (4).

## **56 Enforcement: sale etc of apparatus**

- (1) This section applies where, in the opinion of OFCOM, apparatus does not comply with the requirements applicable to it under regulations made under section 54(2).
- (2) OFCOM may give a notice in writing to the person who, in the course of business, has manufactured, assembled or imported the apparatus, prohibiting him from—
  - (a) selling the apparatus otherwise than for export;
  - (b) offering or advertising it for sale otherwise than for export; or
  - (c) letting it on hire, or offering or advertising it for letting on hire.

## **57 Appeal against notice under section 55 or 56 etc**

- (1) Where an appeal with respect to a notice under section 55 (or section 56) is pending—
  - (a) proceedings for an offence under section 58(1) (or section 58(4)) relating to that notice, whether instituted before or after the bringing of the appeal, are to be stayed until the appeal has been finally determined; and
  - (b) the proceedings are to be discharged if the notice is set aside in consequence of the appeal.
- (2) But subsection (1) does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.
- (3) For the purposes of this section an appeal under section 192 of the Communications Act 2003 (c. 21) with respect to a notice under section 55 (or section 56) or a further appeal relating to the decision on such an appeal is pending unless—
  - (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision on the appeal; or
  - (b) no further appeal against a decision made on the appeal or on any such further appeal may be brought without the permission of the court and—
    - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought, or
    - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.
- (4) No proceedings for an offence under section 58(1) (or section 58(4)) relating to a notice under section 55 (or section 56) may be commenced in Scotland—
  - (a) until the time during which an appeal against such a notice may be brought has expired; or
  - (b) where such an appeal has been brought, until that appeal has been determined.
- (5) Proceedings in Scotland for such an offence must be commenced—

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- (a) where no appeal has been brought, within six months of the time referred to in subsection (4)(a); and
- (b) where an appeal has been brought and determined, within six months of the date of that determination.

## **58 Contravening notice under section 55 or 56**

- (1) A person commits an offence if—
  - (a) he uses apparatus, or causes or permits apparatus to be used, knowing that a notice under section 55 is in force with respect to it; and
  - (b) the use of the apparatus contravenes the notice.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction—
  - (a) if the offence is one that falls within subsection (6), to a fine not exceeding level 5 on the standard scale;
  - (b) otherwise, to a fine not exceeding level 3 on the standard scale.
- (3) In the application of subsection (2) to Scotland or Northern Ireland, paragraph (a) has effect as if for the words “to a fine not exceeding level 5 on the standard scale” there were substituted “to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both”.
- (4) A person commits an offence if he contravenes the provisions of a notice given to him under section 56 (unless the notice has previously been revoked by OFCOM).
- (5) A person who commits an offence under subsection (4) is liable on summary conviction—
  - (a) if the offence is one that falls within subsection (6), to a fine not exceeding level 5 on the standard scale;
  - (b) otherwise, to a fine not exceeding level 3 on the standard scale.
- (6) An offence falls within this subsection if it involves or consists in a contravention of a notice under section 55 or 56 in relation to apparatus the use of which is likely to cause undue interference with wireless telegraphy used—
  - (a) for the purpose of a safety of life service; or
  - (b) for a purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend.

## **59 Entry and search of premises etc**

- (1) A justice of the peace may issue an authorisation under this section if he is satisfied, on an application supported by sworn evidence, that—
  - (a) there is reasonable ground for believing that there is to be found, on specified premises or in a specified ship, aircraft or vehicle, apparatus that does not comply with the requirements applicable to it under regulations made under section 54;
  - (b) it is necessary to enter those premises, or that ship, aircraft or vehicle, for the purpose of obtaining information that will enable OFCOM to decide whether or not to give a notice under section 55 or 56; and

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- (c) within the period of 14 days before the date of the application to the justice, access to the premises, ship, aircraft or vehicle for the purpose of obtaining such information—
  - (i) has been demanded by a person authorised for the purpose by OFCOM, who has produced sufficient documentary evidence of his identity and authority; but
  - (ii) has been refused.
- (2) But the justice may not issue an authorisation unless the first or second condition is fulfilled as regards the application.
- (3) The first condition is that it is shown to the justice that OFCOM are satisfied that there is reasonable ground for believing that the use of the apparatus in question is likely to cause undue interference with wireless telegraphy used—
  - (a) for the purposes of a safety of life service; or
  - (b) for a purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend.
- (4) The second condition is that it is shown to the justice that—
  - (a) at least seven days before the demand was made, notice that access would be demanded was given to the occupier of the premises or (as the case may be) the person in possession or the person in charge of the ship, aircraft or vehicle;
  - (b) the demand for access was made at a reasonable hour; and
  - (c) it was unreasonably refused.
- (5) An authorisation under this section is an authorisation empowering a person or persons authorised for the purpose by OFCOM, with or without constables—
  - (a) to enter the premises or (as the case may be) the ship, aircraft or vehicle and any premises on which it may be;
  - (b) to search the premises, ship, aircraft or vehicle with a view to discovering whether apparatus falling within subsection (1)(a) is there;
  - (c) if he or they find such apparatus there, to examine and test it with a view to obtaining the information mentioned in subsection (1)(b).
- (6) An authorisation under this section must be in writing and signed by the justice.
- (7) A person authorised by OFCOM to exercise a power conferred by this section may if necessary use reasonable force in the exercise of the power.
- (8) Subsection (7) does not affect any power exercisable by the person apart from that subsection.
- (9) Where under this section a person has a right to examine and test apparatus on premises or in a ship, aircraft or vehicle, any person who—
  - (a) is on the premises, or
  - (b) is in charge of, or in or in attendance on, the ship, aircraft or vehicle,must give him whatever assistance he may reasonably require in the examination or testing of the apparatus.
- (10) A reference in this section to a justice of the peace is to be read—
  - (a) in Scotland, as a reference to a sheriff;
  - (b) in Northern Ireland, as a reference to a lay magistrate.

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## **60 Obstruction and failure to assist**

- (1) A person commits an offence if—
  - (a) he intentionally obstructs a person in the exercise of the powers conferred on him under section 59; or
  - (b) he fails or refuses, without reasonable excuse, to give to such a person any assistance which, under that section, he is under a duty to give to him.
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **61 Sections 54 to 60: interpretation**

References in sections 54 to 60 to apparatus include references to any form of electric line.

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