

## SCHEDULES

### SCHEDULE 1

Section 10

#### PROCEDURE FOR WIRELESS TELEGRAPHY LICENCES

##### *General procedure for applications*

- 1 (1) An application for a grant of a wireless telegraphy licence is to be determined in accordance with procedures prescribed in regulations made by OFCOM.
- (2) The procedures must include provision for—
  - (a) time limits for dealing with the granting of licences;
  - (b) requirements that must be met for the grant of a licence;
  - (c) particulars of the terms, provisions and limitations to which a licence may be made subject.

##### *Time limits*

- 2 (1) The time limits fixed for the purposes of paragraph 1(2) must require a decision on the application to be made, notified to the applicant and published—
  - (a) in the case of an application for a licence relating to a frequency allocated in accordance with the United Kingdom Plan for Frequency Authorisation, not more than six weeks after the day of the receipt of the application; and
  - (b) in any other case, as soon as possible after the receipt of the application.
- (2) The period of six weeks specified in sub-paragraph (1)(a) may be extended by OFCOM where it appears to them necessary to do so—
  - (a) for the purpose of enabling the requirements of any international agreement relating to frequencies, to orbital positions or to satellite co-ordination to be complied with; or
  - (b) in a case where a determination falls to be made as to which of a number of applicants is the more or most suitable to be licensed, for the purpose of securing that the procedure for the making of that determination is fair, reasonable, open and transparent.
- (3) The period may not be extended by virtue of sub-paragraph (2)(b) by more than eight months.

##### *Information to be provided in connection with applications*

- 3 The grounds on which a licence may be refused by OFCOM include a failure by the applicant to provide information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with terms, provisions or limitations to which the licence may be made subject.

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### *Proposed refusal*

- 4 Where OFCOM propose to refuse a licence they must—
- (a) give to the applicant the reasons for the proposed refusal;
  - (b) specify a period of not less than one month within which representations about the proposed refusal may be made.

### *Duration*

- 5 A wireless telegraphy licence continues in force, unless previously revoked by OFCOM, for such period as may be specified in the licence.

### *Revocation or variation*

- 6 OFCOM may revoke a wireless telegraphy licence or vary its terms, provisions or limitations—
- (a) by a notice in writing given to the holder of the licence; or
  - (b) by a general notice applicable to licences of the class to which the licence belongs, published in such way as may be specified in the licence.

### *Notification of proposed revocation or variation*

- 7 (1) Where OFCOM propose to revoke or vary a wireless telegraphy licence, they must give the person holding the licence a notification under this sub-paragraph—
- (a) stating the reasons for the proposed revocation or variation; and
  - (b) specifying the period during which the person notified has an opportunity to do the things specified in sub-paragraph (2).
- (2) The things are—
- (a) making representations about the proposal; and
  - (b) if the proposal is the result of a contravention of a term, provision or limitation of the licence, complying with that term, provision or limitation.
- (3) Subject to sub-paragraphs (4) to (6), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (4) OFCOM may, if they think fit, allow a longer period for doing those things—
- (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.
- (5) The person notified has a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (6) The person notified also has a shorter period if—
- (a) OFCOM have reasonable grounds for believing that the case is urgent or a case of serious and repeated contravention;
  - (b) they have determined that, in the circumstances, a shorter period would be appropriate; and
  - (c) the shorter period has been specified in the notification.
- (7) A case is urgent if the failure to revoke or vary the licence will result in, or create an immediate risk of—

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- (a) a serious threat to the safety of the public, to public health or to national security; or
  - (b) serious economic or operational problems for persons, other than the person in contravention, who—
    - (i) use wireless telegraphy stations or wireless telegraphy apparatus; or
    - (ii) are communications providers or make associated facilities available.
- (8) A contravention of a term, provision or limitation of a licence is a repeated contravention, in relation to a proposal to revoke or vary a licence, if it falls within sub-paragraph (9).
- (9) A contravention falls within this sub-paragraph if—
- (a) a previous notification under sub-paragraph (1) has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence; and
  - (b) the subsequent notification under that sub-paragraph is given no more than 12 months after the day of the making by OFCOM of a determination for the purposes of sub-paragraph (10) that the contravention to which the previous notification related did occur.
- (10) Where OFCOM have given a notification under sub-paragraph (1), they must, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification—
- (a) decide whether or not to revoke or vary the licence in accordance with their proposal, or in accordance with that proposal but with modifications; and
  - (b) give the person holding the licence a notification of their decision.
- (11) The notification under sub-paragraph (10)—
- (a) must be given no more than one week after the making of the decision to which it relates; and
  - (b) must, in accordance with that decision, either revoke or vary the licence or withdraw the proposal for a revocation or variation.
- (12) Nothing in this paragraph applies to a proposal to revoke or vary a licence if the proposal is made at the request or with the consent of the holder of the licence.
- (13) The reference in sub-paragraph (9) to a contravention of a term, provision or limitation of the same licence includes a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.

#### *Restriction on powers of revocation and variation*

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- (1) The terms that OFCOM may include in a wireless telegraphy licence include terms restricting the exercise by them of their power to revoke or vary the licence.
  - (2) The terms that may be included because of sub-paragraph (1) include, in particular, terms providing that the licence may not be revoked or varied except—
    - (a) with the consent of the holder of the licence; or
    - (b) in such other circumstances and on such grounds as may be specified in the licence.

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- (3) The circumstances or grounds may relate to matters relevant for the purposes of any other enactment (and may, in particular, be dependent on the exercise of a statutory discretion under any other enactment).
- (4) A licence containing terms included because of sub-paragraph (1) may also provide that regulations made under section 45—
  - (a) do not apply in relation to a station or apparatus to which the licence relates; or
  - (b) apply in relation to such a station or such apparatus to such extent only, or subject to such modifications, as may be specified in the licence.
- (5) Despite any term or provision included in a wireless telegraphy licence in accordance with this paragraph, OFCOM may at any time by giving the holder of the licence a notice in writing revoke the licence or vary its terms, provisions or limitations, if it appears to OFCOM to be necessary or expedient to do so—
  - (a) in the interests of national security; or
  - (b) for the purpose of securing compliance with an international obligation of the United Kingdom.

## SCHEDULE 2

Section 19

### PROCEDURE FOR GRANTS OF RECOGNISED SPECTRUM ACCESS

#### *General procedure for applications*

- 1 (1) An application for a grant of recognised spectrum access is to be determined in accordance with procedures prescribed in regulations made by OFCOM.
- (2) The procedures must include provision for—
  - (a) time limits for dealing with applications for a grant of recognised spectrum access;
  - (b) requirements which must be met before a grant is made;
  - (c) the restrictions and conditions to which a grant may be made subject.

#### *Information to be provided in connection with applications*

- 2 The grounds on which a grant of recognised spectrum access may be refused by OFCOM include a failure by the applicant to provide information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with restrictions or conditions to which the grant may be made subject.

#### *Notice of proposed refusal of application*

- 3 (1) Where OFCOM propose to refuse an application for a grant of recognised spectrum access, they must give notice to the applicant—
  - (a) stating the reasons for their proposal; and
  - (b) specifying a period within which representations may be made about the proposal.

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- (2) The period must be a period ending not less than one month after the day of the giving of the notice.

*Duration of grant*

- 4 A grant of recognised spectrum access continues in force, unless previously revoked by OFCOM, for such period as may be specified in the notification by which the grant is made.

*Revocation or modification*

- 5 OFCOM may revoke or modify a grant of recognised spectrum access, or the restrictions or conditions to which such a grant is subject, by a notice to the person to whom the grant was made.

*Notice of proposed revocation or modification*

- 6 (1) Where OFCOM propose to revoke or modify a grant of recognised spectrum access or a restriction or condition to which such a grant is subject, they must give a notification to the holder of the grant—
- (a) stating the reasons for their proposal; and
  - (b) specifying the period during which the person notified has an opportunity to do the things specified in sub-paragraph (2).
- (2) The things are—
- (a) making representations about the proposal; and
  - (b) if the proposal is the result of a contravention of a restriction or condition of the grant, complying with it.
- (3) Subject to sub-paragraphs (4) to (6), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (4) OFCOM may, if they think fit, allow a longer period for doing those things—
- (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.
- (5) The person notified has a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (6) The person notified also has a shorter period if—
- (a) OFCOM have reasonable grounds for believing that the case is urgent or a case of serious and repeated contravention;
  - (b) they have determined that, in the circumstances, a shorter period would be appropriate; and
  - (c) the shorter period has been specified in the notification.
- (7) A case is urgent if the failure to revoke or modify the grant will result in, or create an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security; or

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- (b) serious economic or operational problems for persons, other than the person in contravention, who—
  - (i) use wireless telegraphy stations or wireless telegraphy apparatus; or
  - (ii) are communications providers or make associated facilities available.
- (8) A contravention of a restriction or condition of a grant of recognised spectrum access is a repeated contravention, in relation to a proposal to revoke or modify the grant, if it falls within sub-paragraph (9).
- (9) A contravention falls within this sub-paragraph if—
  - (a) a previous notification under sub-paragraph (1) has been given in respect of the same contravention or in respect of any other contravention of a restriction or condition of the same grant; and
  - (b) the subsequent notification under that sub-paragraph is given no more than 12 months after the day of the making by OFCOM of a determination for the purposes of sub-paragraph (10) that the contravention to which the previous notification related did occur.
- (10) Where OFCOM have given a notification under sub-paragraph (1), they must, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification—
  - (a) decide whether or not to revoke or modify the grant of recognised spectrum access in accordance with their proposal, or in accordance with that proposal but with modifications; and
  - (b) give the holder of the grant a notification of their decision.
- (11) The notification under sub-paragraph (10)—
  - (a) must be given no more than one week after the making of the decision to which it relates; and
  - (b) must, in accordance with that decision, either revoke or modify the grant or withdraw the proposal for revocation or modification.
- (12) Nothing in this paragraph is to apply to—
  - (a) a revocation or modification to be made at the request or with the consent of the holder of the grant; or
  - (b) a revocation or modification that appears to OFCOM to be necessary or expedient for the purpose of securing compliance with an international obligation of the United Kingdom.
- (13) The reference in sub-paragraph (9) to a contravention of a restriction or condition of the same grant includes a reference to a contravention of a restriction or condition contained in any previous grant of which the grant in question is a direct or indirect renewal.

*Restriction on powers of revocation and modification*

- 7 (1) The conditions that OFCOM may include in a grant of recognised spectrum access include conditions restricting the exercise by them of their power to revoke or modify the grant.
- (2) Those conditions include, in particular, conditions providing that the grant may not be revoked or modified except—

- (a) with the consent of the holder of the grant; or
  - (b) in such other circumstances and on such grounds as may be specified in the conditions.
- (3) The circumstances or grounds may relate to matters relevant for the purposes of any enactment, whether relating to wireless telegraphy or not (and may, in particular, be made dependent on the exercise of a statutory discretion under any enactment).
- (4) Nothing in a condition included in a grant of recognised spectrum access restricts the power of OFCOM to revoke or modify a grant of recognised spectrum access, if it appears to OFCOM to be necessary or appropriate to do so—
- (a) in the interests of national security;
  - (b) in the interests of the safety of the public or public health; or
  - (c) for the purpose of securing compliance with an international obligation of the United Kingdom.
- (5) “Enactment” has the same meaning as in the Communications Act 2003 (c. 21).

## SCHEDULE 3

Section 52

## SUSPENSION AND REVOCATION OF AUTHORITIES ISSUED TO WIRELESS PERSONNEL

*Notice of suspension*

- 1 (1) On suspending the authority, the Secretary of State must give the person to whom the authority under section 52(3) was issued a notice—
- (a) informing him of the suspension, of the grounds of the suspension and of his rights under this Schedule;
  - (b) further informing him that if he does not avail himself of those rights the Secretary of State may revoke the authority.
- (2) Sub-paragraph (3) applies where it appears to the Secretary of State that it is not reasonably practicable to give the notice to the person to whom the authority was issued.
- (3) The Secretary of State must take such steps, by advertisement or otherwise, to bring the notice to the person’s knowledge as appear to the Secretary of State to be reasonable in the circumstances.

*Reference to advisory committee*

- 2 (1) The person to whom the authority was issued may request that the question whether the authority should be revoked, or its suspension continued or terminated, be referred to an advisory committee.
- (2) The request is to be made within such period and in such manner as may be specified in the notice under paragraph 1.
- (3) Where a request is made under sub-paragraph (1) the Secretary of State must, unless he terminates the suspension, refer the question to an advisory committee.

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- (4) For the purposes of this Schedule an advisory committee is a committee consisting of three persons appointed by the Secretary of State.
- (5) The three persons appointed are to be—
- (a) an independent chairman selected by the Secretary of State;
  - (b) a person nominated by such body or bodies representing employers of wireless operators as seem to the Secretary of State to be appropriate for the purpose;
  - (c) a person nominated by such association or associations representing wireless operators as seem to the Secretary of State to be appropriate for the purpose.
- (6) Where a question is referred to an advisory committee under this paragraph, the committee must—
- (a) inquire into the matter, and
  - (b) consider any representations made by the person to whom the authority was issued,
- and then make a report to the Secretary of State.
- (7) The report is to state—
- (a) the facts as found by the committee, and
  - (b) the action that, in their opinion, ought to be taken as respects the revocation of the authority or the continuation or termination of its suspension.
- (8) The Secretary of State is to consider the report.

*Decision by Secretary of State*

- 3 (1) Sub-paragraph (2) applies—
- (a) after the Secretary of State has considered the report of the advisory committee; or
  - (b) if no request for a reference to an advisory committee has been made within the period and in the manner referred to in paragraph 2(2), on the expiry of that period.
- (2) The Secretary of State must (as he thinks fit)—
- (a) revoke the authority;
  - (b) terminate the suspension of the authority; or
  - (c) continue the suspension for such period as he thinks fit.
- (3) Sub-paragraph (4) applies where the Secretary of State revokes the authority or continues its suspension.
- (4) The Secretary of State must, if requested to do so by the person to whom the authority was issued, inform him of the opinion expressed by the advisory committee as to the action that ought to be taken as respects—
- (a) the revocation of the authority; or
  - (b) the continuation or termination of its suspension.

*Payment of expenses*

- 4 The Secretary of State is to pay—



- (a) the expenses incurred by an advisory committee under this Schedule, to the extent determined by him; and
- (b) such sums as he may determine in respect of the expenses of the members of the committee.

## SCHEDULE 4

Section 96

### FIXED PENALTIES

#### *Offences to which this Schedule applies*

- 1 (1) This Schedule applies to an offence under this Act (other than Part 4) which is a summary offence.
- (2) Such an offence is referred to in this Schedule as a “relevant offence”.

#### *Fixed penalties and fixed penalty notices*

- 2 (1) The fixed penalty for a relevant offence is such amount as may be prescribed in relation to that offence by regulations made by the Secretary of State.
- (2) The amount prescribed by regulations under sub-paragraph (1) is not to be more than 25 per cent. of the maximum fine on summary conviction for the offence in question.
- (3) In this Schedule “fixed penalty notice” means a notice offering the opportunity of the discharge of any liability to conviction of the offence to which the notice relates by payment of a fixed penalty in accordance with this Schedule.

#### *Issuing of fixed penalty notice*

- 3 (1) If OFCOM have reason to believe that a person has committed a relevant offence, they may send a fixed penalty notice to that person.
- (2) If a procurator fiscal receives a report that a person has committed a relevant offence in Scotland, he also has power to send a fixed penalty notice to that person.
- (3) If an authorised person has, on any occasion, reason to believe that a person—
- (a) is committing a relevant offence, or
  - (b) has on that occasion committed a relevant offence,
- he may hand that person a fixed penalty notice.
- (4) “Authorised person” means a person authorised by OFCOM, for the purposes of sub-paragraph (3), to issue fixed penalty notices on OFCOM’s behalf.
- (5) References in this Schedule to the person by whom a fixed penalty notice is issued, in relation to a notice handed to a person in accordance with sub-paragraph (3), are references to OFCOM.

#### *Content of fixed penalty notice*

- 4 (1) A fixed penalty notice must—
- (a) state the alleged offence;

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- (b) give such particulars of the circumstances alleged to constitute that offence as are necessary for giving reasonable information about it;
  - (c) state the fixed penalty for that offence;
  - (d) specify the relevant officer to whom the fixed penalty may be paid and the address at which it may be paid;
  - (e) state that proceedings against the person to whom it is issued cannot be commenced in respect of the offence until the end of the suspended enforcement period;
  - (f) state that such proceedings cannot be commenced if the penalty is paid within the suspended enforcement period;
  - (g) inform the person to whom it is issued of his right to ask to be tried for the alleged offence; and
  - (h) explain how that right may be exercised and the effect of exercising it.
- (2) The suspended enforcement period for the purposes of this Schedule is—
- (a) the period of one month beginning with the day after that on which the fixed penalty notice was issued; or
  - (b) such longer period as may be specified in the notice.

#### *Withdrawal of fixed penalty notice*

- 5 If it appears to a person who has issued a fixed penalty notice that it was wrongly issued—
- (a) he may withdraw the notice by a further notice to the person to whom it was issued; and
  - (b) if he does so, the relevant officer must repay any amount paid in respect of the penalty.

#### *Notification to person to whom payment is to be made*

- 6 A person who issues (or withdraws) a fixed penalty notice must send a copy of the notice (or of the notice of withdrawal) to the relevant officer specified in the notice being issued (or withdrawn).

#### *Effect of fixed penalty notice*

- 7 (1) This paragraph applies if a fixed penalty notice is issued to a person (“the alleged offender”).
- (2) Proceedings for the offence to which the notice relates cannot be brought against the alleged offender until the person who issued the notice has been notified by the relevant officer specified in the notice that payment of the fixed penalty has not been made within the suspended enforcement period.
- (3) If the alleged offender asks to be tried for the alleged offence—
- (a) sub-paragraph (2) does not apply; and
  - (b) proceedings may be brought against him.
- (4) Such a request must be made by a notice given by the alleged offender—
- (a) in the manner specified in the fixed penalty notice; and
  - (b) before the end of the suspended enforcement period.

- (5) A request made in accordance with sub-paragraph (3) is referred to in this Schedule as a “request to be tried”.

*Payment of fixed penalty*

- 8 (1) If the alleged offender decides to pay the fixed penalty, he must pay it to the relevant officer specified in the notice.
- (2) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise).
- (3) Sub-paragraph (4) applies if a person—
- (a) claims to have made payment by that method; and
  - (b) shows that his letter was posted.
- (4) Unless the contrary is proved, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post.
- (5) Sub-paragraph (2) does not prevent the payment of a penalty by other means.
- (6) A letter is properly addressed for the purposes of sub-paragraph (2) if it is addressed in accordance with the requirements specified in the fixed penalty notice.

*Effect of payment*

- 9 If the fixed penalty specified in a fixed penalty notice is paid within the period specified in that notice, no proceedings for the offence to which that notice relates may be brought against the alleged offender.

*Service of statement and proof of service*

- 10 (1) This paragraph applies to proceedings for a relevant offence.
- (2) A certificate by OFCOM—
- (a) that a copy of a statement by a person authorised by OFCOM was included in, or given with, a fixed penalty notice,
  - (b) that the notice was a notice with respect to the relevant offence, and
  - (c) that that notice was issued to the accused on a date specified in the certificate,
- is evidence that a copy of the statement was served on the alleged offender by delivery to him on that date.
- (3) The statement is to be treated as properly served for the purposes of—
- (a) section 9 of the Criminal Justice Act 1967 (c. 80) (proof by written statement), and
  - (b) section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28 (N.I.)) (corresponding provision for Northern Ireland),
- even though the manner of service is not authorised by subsection (8) of either of those sections.
- (4) Sub-paragraphs (5) and (6) apply to any proceedings in which service of a statement is proved by a certificate under this paragraph.
- (5) For the purposes of—

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- (a) section 9(2)(c) of the Criminal Justice Act 1967 (copy of statement to be tendered in evidence to be served before hearing on other parties to the proceedings by or on behalf of the party proposing to tender it), and
  - (b) section 1(2)(c) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (corresponding provision for Northern Ireland),
- service of the statement is to be taken to have been effected by or on behalf of the prosecutor.
- (6) If the alleged offender makes a request to be tried—
- (a) section 9(2)(d) of the Criminal Justice Act 1967 (time for objection), and
  - (b) section 1(2)(d) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (corresponding provision for Northern Ireland),
- are to apply with the substitution, for the reference to seven days from the service of the copy of the statement, of a reference to seven days beginning with the day after the one on which the request to be tried was made.
- (7) This paragraph does not extend to Scotland.

#### *Certificate about payment*

- 11 In any proceedings, a certificate—
- (a) that payment of a fixed penalty was, or was not, received by the relevant officer specified in the fixed penalty notice by a date specified in the certificate, or
  - (b) that a letter containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate,
- is evidence (and in Scotland sufficient evidence) of the facts stated, if the certificate purports to be signed by that officer.

#### *Regulations*

- 12 The Secretary of State may by regulations make provision as to any matter incidental to the operation of this Schedule, and in particular—
- (a) for prescribing any information or further information to be provided in a notice, notification, certificate or receipt;
  - (b) for prescribing the duties of relevant officers and the information to be supplied to and by them.

#### *Interpretation*

- 13 In this Schedule “relevant officer” means—
- (a) in relation to England and Wales, the designated officer for the magistrates' court;
  - (b) in relation to Scotland, the clerk of court; and
  - (c) in relation to Northern Ireland, the clerk of petty sessions.

## SCHEDULE 5

Section 103

### FORFEITURE ON CONVICTION

#### *Power to order forfeiture*

- 1 (1) Where a person is convicted of a relevant offence, the court may, as well as imposing any other penalty, order to be forfeited to OFCOM such of the things mentioned in sub-paragraph (2) as the court considers appropriate.
- (2) The things are—
  - (a) any vehicle, ship or aircraft, or any structure or other object, that was used in connection with the commission of the offence;
  - (b) any wireless telegraphy apparatus or other apparatus in relation to which the offence was committed;
  - (c) any wireless telegraphy apparatus or other apparatus that was used in connection with the commission of the offence;
  - (d) any wireless telegraphy apparatus or other apparatus (not falling within paragraph (b) or (c)) that—
    - (i) was in the possession or under the control of the person convicted of the offence at the time he committed it, and
    - (ii) was intended to be used (whether or not by that person) in connection with the making of a broadcast or other transmission that would contravene section 8 or any provision of Part 5.
- (3) References in sub-paragraph (2)(b) to (d) to apparatus other than wireless telegraphy apparatus include references to—
  - (a) recordings;
  - (b) equipment designed or adapted for use—
    - (i) in making recordings, or
    - (ii) in reproducing sounds or visual images from recordings;
  - (c) any other equipment that is connected, directly or indirectly, to wireless telegraphy apparatus.
- (4) A relevant offence is—
  - (a) an offence under Chapter 4 or 5 of Part 2 consisting in a contravention of any provision of that Part in relation to a wireless telegraphy station or wireless telegraphy apparatus (including an offence under section 37 or 38);
  - (b) an offence under section 66;
  - (c) an offence under section 68;
  - (d) an offence under Part 5.
- (5) But the following are not relevant offences—
  - (a) an offence under section 35 consisting in the installation or use of receiving apparatus;
  - (b) an offence under section 36 committed in relation to receiving apparatus;
  - (c) an offence under section 51(4).

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#### *Forfeiture in relation to restricted apparatus*

- 2 (1) Where a person is convicted of an offence under Part 2, 3 or 6 involving restricted apparatus, the court must order the apparatus to be forfeited to OFCOM unless the defendant or a person who claims to be the owner of, or otherwise interested in, the apparatus shows cause why it should not be forfeited.
- (2) This paragraph does not affect the operation of paragraph 1 in relation to apparatus that is not restricted apparatus.
- (3) Apparatus is restricted apparatus if custody or control of apparatus of any class or description to which it belongs is for the time being restricted by a restriction order under section 62.

#### *Property of third parties*

- 3 Apparatus may be ordered to be forfeited under paragraph 1 or 2 even if it is not the property of the person by whom the offence giving rise to the forfeiture was committed.

#### *Disposal of apparatus*

- 4 Apparatus ordered to be forfeited under paragraph 1 or 2 may be disposed of by OFCOM in such manner as they think fit.

#### *Delivery to OFCOM*

- 5 (1) A court that orders apparatus to be forfeited under paragraph 1 or 2 may also order the person by whom the offence giving rise to the forfeiture was committed not to dispose of it except by delivering it up to OFCOM within 48 hours of being so required by them.
- (2) A person against whom an order is made under sub-paragraph (1) commits a further offence if—
- (a) he contravenes the order; or
  - (b) he fails to deliver up the apparatus to OFCOM as required.
- (3) An offence under sub-paragraph (2) is punishable as if it were committed under the same provision, and at the same time, as the offence for which the forfeiture was ordered.

#### *Provisions as to disposal of property disapplied*

- 6 Section 140 of the Magistrates' Courts Act 1980 (c. 43) and Article 58 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (under which magistrates sell or dispose of forfeited property) do not apply in relation to apparatus ordered to be forfeited under paragraph 1 or 2.

#### *Provisions as to deprivation of property disapplied*

- 7 The following provisions (under which a court convicting a person of an offence has power to deprive him of property used etc for purposes of crime) do not apply where a person is convicted of an offence under Part 2, 3 or 5—
- (a) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

- (b) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
- (c) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)).

## SCHEDULE 6

Section 104

### SEIZURE AND FORFEITURE OF RESTRICTED APPARATUS

#### *Application of Schedule*

- 1 (1) This Schedule applies to restricted apparatus seized—
  - (a) in pursuance of a warrant granted under section 97; or
  - (b) in the exercise of the power conferred by section 99(3).
- (2) Apparatus is restricted apparatus for the purposes of this Schedule if custody or control of apparatus of any class or description to which it belongs is for the time being restricted by a restriction order under section 62.

#### *Notice of seizure*

- 2 (1) OFCOM must give notice of the seizure of the restricted apparatus to every person who, to their knowledge, was at the time of the seizure the owner or one of the owners of the apparatus.
- (2) The notice must set out the grounds of the seizure.
- (3) Where there is no proper address for the purposes of the service of a notice under sub-paragraph (1) in a manner authorised by section 112, the requirements of that sub-paragraph shall be satisfied by the publication of a notice of the seizure in the London, Edinburgh or Belfast Gazette (according to the part of the United Kingdom where the seizure took place).
- (4) Apparatus may be condemned or taken to have been condemned under this Schedule only if the requirements of this paragraph have been complied with in the case of that apparatus.

#### *Notice of claim*

- 3 A person claiming that the restricted apparatus is not liable to forfeiture must give written notice of his claim to OFCOM.
- 4 (1) A notice of claim must be given within one month after the day of the giving of the notice of seizure.
- (2) A notice of claim must specify—
  - (a) the name and address of the claimant; and
  - (b) in the case of a claimant who is outside the United Kingdom, the name and address of a solicitor in the United Kingdom who is authorised to accept service of process and to act on behalf of the claimant.
- (3) Service of process upon a solicitor so specified is to be taken to be proper service upon the claimant.

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*Status: This is the original version (as it was originally enacted).*

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### *Condemnation*

- 5           The restricted apparatus is to be taken to have been duly condemned as forfeited if—
- (a) by the end of the period for the giving of a notice of claim in respect of the apparatus, no notice of claim has been given to OFCOM; or
  - (b) a notice of claim is given which does not comply with the requirements of paragraphs 3 and 4.
- 6           (1) Where a notice of claim in respect of the restricted apparatus is duly given in accordance with paragraphs 3 and 4, OFCOM may take proceedings for the condemnation of the apparatus by the court.
- (2) In such proceedings—
- (a) if the court finds that the apparatus was liable to forfeiture at the time of seizure, it must condemn the apparatus as forfeited unless cause is shown why it should not; and
  - (b) if the court finds that the apparatus was not liable to forfeiture at that time, or cause is shown why it should not be forfeited, the court must order the return of the apparatus to the person appearing to the court to be entitled to it.
- (3) If OFCOM decide not to take proceedings for condemnation in a case in which a notice of claim has been so given, they must return the apparatus to the person appearing to them to be the owner of the apparatus, or to one of the persons appearing to them to be the owners of it.
- (4) Apparatus required to be returned in accordance with sub-paragraph (3) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.
- (5) OFCOM's decision whether to take such proceedings must be taken as soon as reasonably practicable after the receipt of the notice of claim.
- 7           Where the restricted apparatus is condemned or taken to have been condemned as forfeited, the forfeiture is to have effect as from the time of the seizure.

### *Proceedings for condemnation by court*

- 8           Proceedings for condemnation are civil proceedings and may be instituted—
- (a) in England or Wales, in the High Court or in a magistrates' court;
  - (b) in Scotland, in the Court of Session or in the sheriff court;
  - (c) in Northern Ireland, in the High Court or in a court of summary jurisdiction.
- 9           Proceedings for the condemnation of restricted apparatus instituted in a magistrates' court in England or Wales, in the sheriff court in Scotland or in a court of summary jurisdiction in Northern Ireland may be so instituted—
- (a) in a court having jurisdiction in a place where an offence under section 66 involving that apparatus was committed;
  - (b) in a court having jurisdiction in proceedings for such an offence;
  - (c) in a court having jurisdiction in the place where the claimant resides or, if the claimant has specified a solicitor under paragraph 4, in the place where that solicitor has his office; or
  - (d) in a court having jurisdiction in the place where that apparatus was seized or to which it was first brought after being seized.



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*Status: This is the original version (as it was originally enacted).*

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- 10 (1) In proceedings for condemnation that are instituted in England and Wales or Northern Ireland, the claimant or his solicitor must make his oath that the seized apparatus was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.
- (2) In proceedings for condemnation instituted in the High Court—
- (a) the court may require the claimant to give such security for the costs of the proceedings as may be determined by the court; and
  - (b) the claimant must comply with such a requirement.
- (3) If a requirement of this paragraph is not complied with, the court must give judgment for OFCOM.
- 11 (1) In the case of proceedings for condemnation instituted in a magistrates' court in England or Wales, either party may appeal against the decision of that court to the Crown Court.
- (2) In the case of proceedings for condemnation instituted in a court of summary jurisdiction in Northern Ireland, either party may appeal against the decision of that court to the county court.
- (3) This paragraph does not affect any right to require the statement of a case for the opinion of the High Court.
- 12 Where an appeal has been made (whether by case stated or otherwise) against the decision of the court in proceedings for the condemnation of restricted apparatus, the apparatus is to be left with OFCOM pending the final determination of the matter.

#### *Disposal of unclaimed property*

- 13 (1) This paragraph applies where a requirement is imposed by or under this Schedule for apparatus to be returned to a person.
- (2) If the apparatus is still in OFCOM's possession after the end of the period of 12 months beginning with the day after the requirement to return it arose, OFCOM may dispose of it in any manner they think fit.
- (3) OFCOM may exercise their power under this paragraph to dispose of apparatus only if it is not practicable at the time when the power is exercised to dispose of the apparatus by returning it immediately to the person to whom it is required to be returned.

#### *Provisions as to proof*

- 14 In proceedings arising out of the seizure of restricted apparatus, the fact, form and manner of the seizure is to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.
- 15 In any proceedings, the condemnation by a court of restricted apparatus as forfeited may be proved by the production of—
- (a) the order or certificate of condemnation; or
  - (b) a certified copy of the order purporting to be signed by an officer of the court by which the order or certificate was made or granted.

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*Status: This is the original version (as it was originally enacted).*

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*Special provisions as to certain claimants*

- 16 (1) This paragraph applies for the purposes of—
- (a) a claim to the restricted apparatus; and
  - (b) proceedings for its condemnation.
- (2) Where at the time of the seizure the apparatus is—
- (a) the property of a body corporate,
  - (b) the property of two or more partners, or
  - (c) the property of more than five persons,
- the oath required by paragraph 10 to be taken by the claimant, and any other thing required by this Schedule or by rules of court to be done by the owner of the apparatus, may be done by a person falling within sub-paragraph (3) or by a person authorised to act on his behalf.
- (3) The persons are—
- (a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
  - (b) where the owners are in partnership, any one or more of the owners;
  - (c) where there are more than five owners and they are not in partnership, any two or more of the owners acting on behalf of themselves and any of their co-owners who are not acting on their own behalf.

*Saving for owner's rights*

- 17 Neither the imposition of a requirement by or under this Schedule to return apparatus to a person nor the return of apparatus to a person in accordance with such a requirement affects—
- (a) the rights in relation to that apparatus of any other person; or
  - (b) the right of any other person to enforce his rights against the person to whom it is returned.

SCHEDULE 7

Section 123

CONSEQUENTIAL AMENDMENTS

*Defamation Act (Northern Ireland) 1955 (c. 11 (N.I.))*

- 1 In section 14 of the Defamation Act (Northern Ireland) 1955 (interpretation) in subsection (2), for “the Wireless Telegraphy Act, 1949” substitute “the Wireless Telegraphy Act 2006”.

*Wireless Telegraphy Act 1967 (c. 72)*

- 2 (1) Section 5 of the Wireless Telegraphy Act 1967 (offences and enforcement) is amended as follows.
- (2) In subsection (1), for “an offence under the principal Act” substitute “an offence under this section”.
- (3) After that subsection insert—

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“(1A) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

(4) After subsection (5) insert—

“(6) Sections 97 and 98 of the Wireless Telegraphy Act 2006 (provision for entry and search of premises) apply in relation to an offence under this section as they apply in relation to an offence under that Act (other than an offence under Part 4 or section 111).”

*Theatres Act 1968 (c. 54)*

3 In section 7 of the Theatres Act 1968 (exceptions for performances given in certain circumstances) in subsection (3), for “the Wireless Telegraphy Act 1949” substitute “the Wireless Telegraphy Act 2006”.

*Port of London Act 1968 (c. xxxii)*

4 In section 190 of the Port of London Act 1968 (saving for Wireless Telegraphy Act 1949 etc) in subsection (1), for the words from “apparatus for” to “Act 1949” substitute “wireless telegraphy apparatus (within the meaning of the Wireless Telegraphy Act 2006)”.

*Local Government Act 1972 (c. 70)*

5 In section 142 of the Local Government Act 1972 (provision by local authorities of information relating to their activities) in subsection (1AC), in paragraph (a), for “the Wireless Telegraphy Act 1949” substitute “Part 2 of the Wireless Telegraphy Act 2006”.

*Thames Barrier and Flood Prevention Act 1972 (c. xlv)*

6 In section 53 of the Thames Barrier and Flood Prevention Act 1972 (saving for Wireless Telegraphy Act 1949) for the words from “apparatus for” to “Act 1949” substitute “wireless telegraphy apparatus (within the meaning of the Wireless Telegraphy Act 2006)”.

*Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22)*

7 In section 9 of the Road Traffic (Driver Licensing and Information Systems) Act 1989 (requirement for licence to operate driver information system) in subsection (3) (a), for “a licence under section 1 of the Wireless Telegraphy Act 1949” substitute “a licence under section 8 of the Wireless Telegraphy Act 2006”.

*Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))*

8 In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (offences for which power of summary arrest available) omit the sub-paragraph (j) relating to section 14(1) of the Wireless Telegraphy Act 1949 (c. 54) and at the end insert—

“(r) an offence under—

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- (i) section 35 of the Wireless Telegraphy Act 2006 (unauthorised use etc of wireless telegraphy station or apparatus) to which section 35(2) applies;
- (ii) section 36 of that Act (keeping wireless telegraphy station or apparatus available for unauthorised use) to which section 36(2) applies;
- (iii) section 37 of that Act (allowing premises to be used for unlawful broadcasting);
- (iv) section 38 of that Act (facilitating unauthorised broadcasting);
- (v) section 47 of that Act (misleading messages);
- (vi) section 68 of that Act (deliberate interference).”

*Broadcasting Act 1990 (c. 42)*

- 9 The Broadcasting Act 1990 is amended as follows.
- 10 In section 3 (licences under Part 1 of that Act) in subsection (8)(a), for “a licence under section 1 of the Wireless Telegraphy Act 1949” substitute “a licence under section 8 of the Wireless Telegraphy Act 2006”.
- 11 In section 86 (licences under Part 3 of that Act) in subsection (9)(a), for “a licence under section 1 of the Wireless Telegraphy Act 1949” substitute “a licence under section 8 of the Wireless Telegraphy Act 2006”.
- 12 (1) Section 89 (offences giving rise to disqualification) is amended as follows.
- (2) In subsection (1) (disqualification from holding licence on grounds of conviction for transmitting offence), for paragraphs (a), (aa), (ab) and (b) substitute—
- “(a) an offence under section 35 of the Wireless Telegraphy Act 2006 (unauthorised use etc of wireless telegraphy station or apparatus) consisting in the establishment or use of a wireless telegraphy station, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of Part 5 of that Act);
  - (aa) an offence under section 36 of that Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 8 of that Act would constitute an offence falling within paragraph (a);
  - (ab) an offence under section 37 or 38 of that Act (unlawful broadcasting offences);
  - (b) an offence under Part 5 of that Act (prohibition of broadcasting from sea or air); or”.
- (3) In subsection (3)(b) (licence conditions excluding persons disqualified) for “a station for wireless telegraphy” substitute “a wireless telegraphy station”.
- 13 In section 202 (general interpretation) in subsection (1), for the definitions of “wireless telegraphy” and “station for wireless telegraphy” substitute—
- ““wireless telegraphy” and “wireless telegraphy station” each has the same meaning as in the Wireless Telegraphy Act 2006.”

*Intelligence Services Act 1994 (c. 13)*

- 14 In section 11 of the Intelligence Services Act 1994 (interpretation and consequential amendments) in subsection (1)(e), for “the Wireless Telegraphy Act 1949” substitute “the Wireless Telegraphy Act 2006”.

*Merchant Shipping Act 1995 (c. 21)*

- 15 In section 91 of the Merchant Shipping Act 1995 (report of dangers to navigation) in subsection (7), for the definitions of “wireless telegraphy licence” and “station for wireless telegraphy” substitute—

““wireless telegraphy licence” has the same meaning as in the Wireless Telegraphy Act 2006, and “station for wireless telegraphy” has the same meaning as “wireless telegraphy station” in that Act.”

*Criminal Procedure (Scotland) Act 1995 (c. 46)*

- 16 In section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) in subsection (9)(a), for “Schedule 6 to the Communications Act 2003” substitute “Schedule 4 to the Wireless Telegraphy Act 2006”.

*Broadcasting Act 1996 (c. 55)*

- 17 In section 3 of the Broadcasting Act 1996 (licences under Part 1 of that Act) in subsection (8)(a), for “a licence under section 1 of the Wireless Telegraphy Act 1949” substitute “a licence under section 8 of the Wireless Telegraphy Act 2006”.
- 18 In section 42 of that Act (licences under Part 2 of that Act) in subsection (7)(a), for “a licence under section 1 of the Wireless Telegraphy Act 1949” substitute “a licence under section 8 of the Wireless Telegraphy Act 2006”.

*Police Act 1997 (c. 50)*

- 19 In section 108 of the Police Act 1997 (interpretation of Part 3) in subsection (1), in the definition of “wireless telegraphy”, for “the Wireless Telegraphy Act 1949” substitute “the Wireless Telegraphy Act 2006”.

*Terrorism Act 2000 (c. 11)*

- 20 In Schedule 10 to the Terrorism Act 2000 (munitions and transmitters: search and seizure) in paragraph 1(3), in the definition of “wireless telegraphy”, for “has the same meaning as in section 19(1) of the Wireless Telegraphy Act 1949” substitute “has the meaning given by section 116 of the Wireless Telegraphy Act 2006”.

*Regulation of Investigatory Powers Act 2000 (c. 23)*

- 21 The Regulation of Investigatory Powers Act 2000 is amended as follows.
- 22 (1) Section 3 (lawful interception without an interception warrant) is amended as follows.
- (2) In subsection (4)(a), for “section 5 of the Wireless Telegraphy Act 1949 (misleading messages and interception and disclosure of wireless telegraphy messages)”

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substitute “section 48 of the Wireless Telegraphy Act 2006 (interception and disclosure of wireless telegraphy messages)”.

- (3) In subsection (5)—
- (a) for paragraph (a) substitute—
    - “(a) the grant of wireless telegraphy licences under the Wireless Telegraphy Act 2006;”, and
  - (b) in paragraph (c), for the words from “any enactment contained” to “so contained” substitute “—
    - (i) any provision of Part 2 (other than Chapter 2 and sections 27 to 31) or Part 3 of that Act, or
    - (ii) any enactment not falling within subparagraph (i)”.
- 23 In section 18 (exceptions to section 17) in subsection (12)(c), for “section 5 of the Wireless Telegraphy Act 1949” substitute “section 47 or 48 of the Wireless Telegraphy Act 2006”.
- 24 In section 81 (general interpretation) in subsection (1), in the definition of “wireless telegraphy”, for “the Wireless Telegraphy Act 1949” substitute “the Wireless Telegraphy Act 2006”.
- Communications Act 2003 (c. 21)*
- 25 The Communications Act 2003 is amended as follows.
- 26 In section 14 (consumer research) in subsection (2), for “the Wireless Telegraphy Act 1949 (c. 54)” substitute “the Wireless Telegraphy Act 2006”.
- 27 In section 190 (resolution of disputes referred to OFCOM) in subsection (4)(c), for “regulations under section 1 or 3 of the Wireless Telegraphy Act 1949 (c. 54)” substitute “regulations under section 8 or 45 of the Wireless Telegraphy Act 2006”.
- 28 In section 192(1) (appeals: decisions subject to appeal)—
- (a) in paragraph (a), for “, the Wireless Telegraphy Act 1949 (c. 54) or the Wireless Telegraphy Act 1998 (c. 6)” substitute “or any of Parts 1 to 3 of the Wireless Telegraphy Act 2006”, and
  - (b) in paragraph (d)(iv), for “section 156” substitute “section 5 of the Wireless Telegraphy Act 2006”.
- 29 In section 364 (TV licences) in subsection (2)(f), for “the Wireless Telegraphy Act 1949 (c. 54)” substitute “the Wireless Telegraphy Act 2006”.
- 30 In section 366 (powers to enforce TV licensing) in subsection (10), in the definition of “interference”, for “the Wireless Telegraphy Act 1949 (c. 54)” substitute “the Wireless Telegraphy Act 2006”.
- 31 In section 393 (general restrictions on disclosure of information) in subsection (5), after paragraph (n) insert—
- “(na) the Wireless Telegraphy Act 2006;”.
- 32 In section 400 (destination of licence fees and penalties), in subsection (1)—
- (a) in paragraph (c), for “the Wireless Telegraphy Act 1998 (c. 6)” substitute “Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006”, and
  - (b) in paragraph (d), for “section 175” substitute “section 42 of that Act”.

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- 33 (1) Section 401 (power of OFCOM to retain costs of carrying out spectrum functions) is amended as follows.
- (2) In subsection (1), for “the Wireless Telegraphy Act 1998 (c. 6)” substitute “Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006”.
- (3) In subsection (5), for paragraphs (b) to (g) (and the word “and” following paragraph (g)) substitute—
- “(b) their functions under section 1(1) and (2) of the Wireless Telegraphy Act 2006 so far as carried out in relation to the use of the electromagnetic spectrum at places outside the United Kingdom, and their functions under section 1(5);
  - (c) their functions under section 4 of that Act;
  - (d) their functions under section 7 of that Act;
  - (e) their functions under section 30 of that Act;
  - (f) their functions under sections 42 to 44 of that Act;
  - (g) any functions conferred on them under sections 47 to 49 of that Act; and”.
- (4) In paragraph (h) of that subsection, for “or 152(8) of this Act” substitute “of this Act or section 1(8) of the Wireless Telegraphy Act 2006”.
- 34 (1) Section 405 (general interpretation) is amended as follows.
- (2) In subsection (1), in the definition of “the enactments relating to the management of the radio spectrum”—
- (a) for paragraphs (a) to (f) (and the word “and” following paragraph (f)) substitute—
    - “(a) the Wireless Telegraphy Act 2006; and”, and
  - (b) for paragraph (g) substitute—
    - “(g) the provisions of this Act so far as relating to that Act;”.
- (3) In that subsection, for the definition of “wireless telegraphy” substitute—
- ““wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 2006;”.
- (4) In that subsection, for the definition of “wireless telegraphy licence” substitute—
- ““wireless telegraphy licence” means a licence granted under section 8 of the Wireless Telegraphy Act 2006.”
- 35 In section 410 (application of enactments to territorial sea and other waters) in subsection (1)—
- (a) in paragraph (b), after “that Part” insert “or the Wireless Telegraphy Act 2006”, and
  - (b) in paragraph (c), after “made” insert “or a matter as respects which the Wireless Telegraphy Act 2006 makes provision”.
- 36 In Schedule 8 (decisions not subject to civil appeal), omit paragraphs 13 to 36 and at end insert—

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*“Wireless Telegraphy Act 2006*

- 37 A decision relating to the publication of the United Kingdom Plan for Frequency Authorisation.
- 38 A decision in exercise of the functions conferred on OFCOM by section 1 as to—
- (a) the services, records and advice to be provided, maintained or given by them;
  - (b) the research to be carried out or the arrangements made for carrying it out; or
  - (c) the making or terms of any grant.
- 39 A decision under section 4 or 7.
- 40 A decision given effect to—
- (a) by regulations under section 8(3), 12, 14, 18, 21, 23, 27, 30, 45 or 54 or paragraph 1 of Schedule 1 or paragraph 1 of Schedule 2;
  - (b) by an order under section 29 or 62.
- 41 A decision relating to the recovery of a sum payable to OFCOM under section 15 or 24.
- 42 A decision given effect to by regulations under section 31 and any decision under any such regulations.
- 43 A decision relating to the making or revision of a statement under—
- (a) section 34, or
  - (b) section 44.
- 44 A decision to impose a penalty under section 42(1).
- 45 A decision for the purposes of section 59.
- 46 A decision relating to an authority under section 62(5).”

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 37 In section 146 of the Income Tax (Trading and Other Income) Act 2005 (meaning of “relevant telecommunication right”), in paragraph (a) (wireless telegraphy licence), for the words from “granted” to “licences),” substitute “granted under section 8 of the Wireless Telegraphy Act 2006 in accordance with regulations made under section 14 of that Act (bidding for licences).”.

*Commissioners for Revenue and Customs Act 2005 (c. 11)*

- 38 In Part 1 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (functions of Commissioners and officers: restrictions)—
- (a) in paragraph 1, for “an authority under section 5 of the Wireless Telegraphy Act 1949 (interception, &c.)” substitute “an authority for the purposes of section 48 of the Wireless Telegraphy Act 2006 (interception, &c.)”, and
  - (b) for the italic cross-heading before that paragraph substitute “*Wireless Telegraphy Act 2006 (c. 36)*”.



## SCHEDULE 8

Section 124

### TRANSITIONAL PROVISIONS, SAVINGS AND TRANSITORY MODIFICATIONS

#### PART 1

##### TRANSITIONAL PROVISIONS AND SAVINGS

###### *General provisions*

- 1 The substitution of provisions of this Act for provisions repealed or revoked by it does not affect the continuity of the law.
- 2 Anything done, or having effect as if done, under or for the purposes of a provision repealed by this Act (including subordinate legislation so made or having effect as if so made), and in force or effective immediately before the commencement of this Act, has effect after that commencement as if done under or for the purposes of the corresponding provision of this Act.
- 3 A reference (express or implied) in this Act or another enactment, or in an instrument or document, to a provision of this Act is (so far as the context permits) to be read as (according to the context) being or including a reference to the corresponding provision repealed by this Act, in relation to times, circumstances or purposes in relation to which the repealed provision had effect.
- 4 (1) A reference (express or implied) in an enactment, or in an instrument or document, to a provision repealed by this Act is (so far as the context permits) to be read as (according to the context) being or including a reference to the corresponding provision of this Act, in relation to times, circumstances and purposes in relation to which that corresponding provision has effect.  
(2) In particular, where a power conferred by an Act is expressed to be exercisable in relation to enactments contained in Acts passed before or in the same Session as the Act conferring the power, the power is also exercisable in relation to provisions of this Act that reproduce such enactments.
- 5 Paragraphs 1 to 4 have effect in place of section 17(2) of the Interpretation Act 1978 (c. 30) (but do not affect the application of any other provision of that Act).
- 6 Paragraphs 2 and 4(1) do not apply to an Order in Council to which paragraph 24(1) applies.

###### *General rule for old savings*

- 7 (1) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.  
(2) The repeal by this Act of a saving on the previous repeal of an enactment does not affect the saving in so far as it remains capable of having effect.

###### *Use of existing forms etc*

- 8 A reference to an enactment repealed by this Act which is contained in a document made, served or issued on or after the commencement of that repeal is to be read,

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except so far as a contrary intention appears, as referring or, as the context may require, including a reference to the corresponding provision of this Act.

*Regulatory Reform Act 2001 (c. 6)*

- 9 (1) This paragraph has effect during the period of two years beginning with the day on which this Act is passed for the purposes of the making of an order under section 1 of the 2001 Act in relation to a provision of this Act that reproduces a provision repealed or revoked by this Act.
- (2) The law contained in such a provision of this Act is legislation for the purposes of section 1 of the 2001 Act if, at the time the order is made, the corresponding repealed or revoked provision would have been legislation for those purposes had it not been repealed or revoked.
- (3) No order under section 1 of the 2001 Act may be made, in relation to a provision of this Act, if the corresponding repealed provision was amended otherwise than merely for consequential or incidental purposes—
- (a) by an Act passed not more than two years before the day on which the order is made, or
- (b) by subordinate legislation made not more than two years before that day.
- (4) Sub-paragraph (3) does not prevent an order under section 1 of the 2001 Act re-enacting without substantive amendment the provision of this Act that reproduces the repealed provision which was so amended.
- (5) Sub-paragraph (3) does not affect the operation of section 1(4) of the 2001 Act in relation to any amendment made to this Act.
- (6) The 2001 Act is the Regulatory Reform Act 2001.

*Contracted-out functions under section 1 of the Wireless Telegraphy Act 1949*

- 10 An order under Part 2 of the Deregulation and Contracting Out Act 1994 (c. 40) which is in force immediately before the commencement of this Act and, by virtue of paragraph 6 of Schedule 18 to the Communications Act 2003 (c. 21), has effect as if made by virtue of section 1(7) of that Act shall, so long as the order remains in force, continue to have that effect by virtue of this paragraph.

*Wireless telegraphy licences granted before 18th June 1998*

- 11 (1) This paragraph has effect in relation to wireless telegraphy licences granted before 18th June 1998 (the date on which section 1 of the Wireless Telegraphy Act 1998 (c. 6) came into force).
- (2) Where this paragraph has effect, section 12 is the provision of this Act which, for the purposes of paragraph 4(1) of this Schedule, corresponds to section 2(1) of the Wireless Telegraphy Act 1949 (c. 54).

*Procedures treated as prescribed by regulations made by OFCOM*

- 12 (1) Sub-paragraph (2) applies where, immediately before the commencement of this Act, procedures have effect, by virtue of paragraph 20(2) or 21(2) of Schedule 18 to

the Communications Act 2003 (c. 21), as if prescribed by OFCOM by regulations under—

- (a) section 1D(3) of the Wireless Telegraphy Act 1949, or
- (b) section 3 of the Wireless Telegraphy Act 1998.

(2) In relation to times after the commencement of this Act, the procedures are to have effect as if prescribed by OFCOM by regulations under—

- (a) paragraph 1 of Schedule 1, or
- (b) section 14.

(3) A notice under—

- (a) section 1D of the Wireless Telegraphy Act 1949, or
- (b) regulations under section 3 of the Wireless Telegraphy Act 1998,

which is in force immediately before the commencement of this Act and, by virtue of paragraph 20 or 21 of Schedule 18, has effect as if it authorised or required a thing to be done by or in relation to OFCOM shall, so long as it remains in force, continue to have that effect by virtue of this paragraph.

#### *Tribunal established under section 9 of the Wireless Telegraphy Act 1949*

- 13 The repeal by this Act of sections 11 and 12 of the Wireless Telegraphy Act 1949 does not affect the continued operation of section 11 or 12 (without the amendments made in those sections by section 178 of the Communications Act 2003) in relation to a notice under section 11(1) or (2) or section 12(1) that is served before 25th July 2003.

#### *References to Postmaster General etc*

- 14 The repeal by this Act of part of section 3(1)(ii) of the Post Office Act 1969 (c. 48) is not to affect the continued operation of section 3(1)(ii) in relation to a provision of regulations or a licence where the regulations were made or the licence was granted under the Wireless Telegraphy Act 1949 before 1st October 1969 (the day on which functions of the Postmaster General were transferred to the Minister).

#### *Procedure for prosecutions*

- 15 (1) This paragraph has effect in relation to prosecutions to which section 41 of this Act applies.
- (2) The restrictions on the bringing of proceedings which are imposed by section 41(2) and (3) do not have effect in relation to proceedings started before 25th July 2003 (the date on which section 174 of the Communications Act 2003 (c. 21) came into force).

#### *Penalties for certain offences triable either way*

- 16 In relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the references in the following provisions to periods of imprisonment of 12 months are to be read as references to periods of imprisonment of six months—
- (a) section 35(2);
  - (b) section 36(2);
  - (c) section 37(2);

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- (d) section 38(6);
- (e) section 47(4);
- (f) section 68(3);
- (g) section 93(1).

*Penalties for offences: unauthorised use of wireless telegraphy station etc*

- 17 In relation to an offence committed before 18th September 2003 (the date on which section 179 of the Communications Act 2003 came into force), each of sections 35(5) and 36(5) is to have effect as if for the words from “is liable” to the end there were substituted “is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”
- 18 In relation to an offence committed on or after 18th September 2003 but before the commencement of section 281(5) of the Criminal Justice Act 2003, the references in the following provisions to periods of imprisonment of 51 weeks are to be read as references to periods of imprisonment of six months—
- (a) section 35(5);
  - (b) section 36(5).

*Penalties for offences: contravening notice under section 55 or 56*

- 19 In relation to an offence committed before the commencement of section 280 of the Criminal Justice Act 2003, section 58(2) has effect as if in paragraph (a) 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”.

*Fixed penalties for wireless telegraphy offences*

- 20 Schedule 4 to this Act does not apply to offences committed before the day which is the relevant commencement date for the purposes of paragraph 27 of this Schedule.

*Powers of seizure*

- 21 In relation to an offence committed before 18th September 2003 (the date on which section 179 of the Communications Act 2003 (c. 21) came into force), section 99(1) of this Act has effect with the omission of paragraph (c).

*Forfeiture etc of restricted apparatus*

- 22 Nothing in section 104 of, and Schedule 6 to, this Act applies in relation to apparatus seized before 29th December 2003 (the date on which section 182 of the Communications Act 2003 came into force).

*Appeals of wireless telegraphy decisions*

- 23 The repeals made by this Act do not affect the continued operation of paragraph 23(2) of Schedule 18 to the Communications Act 2003 as regards decisions against which an appeal could have been brought under section 1F of the Wireless Telegraphy Act 1949 (c. 54).

*Orders in Council: section 118*

- 24 (1) An Order in Council made under a provision that is repealed by this Act and re-enacted in section 118(3) continues to have effect despite the repeal of that provision.
- (2) An Order in Council made under section 118(3) may amend or revoke an Order in Council continued in effect by sub-paragraph (1).

*Orders in Council: continental shelf*

- 25 (1) This paragraph applies in the case of an Order in Council which, as a result of paragraph 63 of Schedule 18 to the Communications Act 2003 (provision relating to Orders in Council under section 6 of the Continental Shelf Act 1964 (c. 29)), has effect, immediately before the commencement of this Act, as if made under section 410 of the Communications Act 2003.
- (2) An Order in Council to which this paragraph applies is to have effect, after the commencement of this Act, as an Order in Council made in exercise of the powers conferred by section 120.

## PART 2

### TRANSITORY MODIFICATIONS

*Justice (Northern Ireland) Act 2002 (c. 26)*

- 26 (1) This paragraph applies if paragraph 25 of Schedule 7 to the Justice (Northern Ireland) Act 2002 has not come into force before the commencement of this Act.
- (2) Until the relevant commencement date, section 93(4)(b) has effect as if for “the Advocate General for Northern Ireland” there were substituted “the Attorney General for Northern Ireland”.
- (3) The relevant commencement date is—
- (a) if an order has been made before the commencement of this Act appointing a day after that commencement as the day for the coming into force of paragraph 25 of Schedule 7 to the Justice (Northern Ireland) Act 2002 (c. 26), the day so appointed;
  - (b) otherwise, such day as the Secretary of State may by order appoint.

*Communications Act 2003 (c. 21)*

- 27 (1) This paragraph applies if—
- (a) section 180 of the Communications Act 2003, and
  - (b) Schedule 6 to that Act,
- have not come into force before the commencement of this Act.

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- (2) Until the relevant commencement date, this Act has effect with the omission of—
  - (a) section 96, and
  - (b) Schedule 4.
- (3) The relevant commencement date is—
  - (a) if an order has been made before the commencement of this Act appointing a day after that commencement as the day for the coming into force of the provisions mentioned in sub-paragraph (1), the day so appointed;
  - (b) otherwise, such day as the Secretary of State may by order appoint.

*Power to make transitional provision*

- 28 Section 121(3) of this Act does not apply to an order made by the Secretary of State under paragraph 26 or 27, but—
- (a) an order under paragraph 26 may make such provision as may be made by an order under section 89(1) of the Justice (Northern Ireland) Act 2002 in connection with the coming into force of a provision of that Act, and
  - (b) an order under paragraph 27 may make such provision as, by virtue of section 411(4) of the Communications Act 2003, is authorised to be made by an order under section 411(2) of that Act.

*Saving for old transitional provisions*

- 29 (1) This paragraph applies to any transitional or transitory provision or saving (“the transitional provision”) made in connection with the coming into force of any provision of the Justice (Northern Ireland) Act 2002 or the Communications Act 2003 mentioned in sub-paragraph (1) of paragraph 26 or 27 (“the old enactment”).
- (2) If the old enactment is in force before the commencement of the provision of this Act reproducing its effect (“the corresponding provision of this Act”), the transitional provision is to continue to have effect (so far as capable of doing so) in relation to the corresponding provision of this Act.
- (3) Sub-paragraph (4) applies if—
- (a) sub-paragraph (2) does not apply, but
  - (b) before the commencement of this Act an order has been made appointing a day for the coming into force of the old enactment.
- (4) The transitional provision is to have effect from the date so appointed in relation to the corresponding provision of this Act.

SCHEDULE 9

Section 125

REPEALS AND REVOCATIONS

PART 1

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Wireless Telegraphy Act 1949 (c. 54)	The whole Act.
Marine, &c., Broadcasting (Offences) Act 1967 (c. 41)	The whole Act.
Wireless Telegraphy Act 1967 (c. 72)	Sections 7 to 12. In section 13(4) the words from “, and” to the end. In section 15— (a) subsections (2) and (3), and (b) in subsection (6) the words “, except for section 7 of this Act.”.
Post Office Act 1969 (c. 48)	In section 3— (a) in subsection (1)(a) the words from the beginning to “day and”, (b) in subsection (1)(ii) the words “, rules or a licence” and “the Wireless Telegraphy Act 1949 or”, and (c) subsection (6).
British Nationality Act 1981 (c. 61)	In Schedule 7, the paragraph relating to the Marine, &c., Broadcasting (Offences) Act 1967.
Criminal Justice Act 1982 (c. 48)	Section 50. In section 81— (a) in subsection (5) the entry relating to section 50, and (b) subsection (12)(c)(v).
Telecommunications Act 1984 (c. 12)	Part 6. In section 101— (a) in subsection (1)(a) the words “(except Part 6)”, (b) in subsection (2)(a) the words “(except functions assigned by or under Part 6)”, and (c) in subsection (3)(q) the words from “(excluding” to the end. Section 104(1B) and (1C).
Consumer Protection Act 1987 (c. 43)	In Schedule 4, paragraph 9(1).

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Copyright, Designs and Patents Act 1988 (c. 48)	In Schedule 7, paragraph 9.
Electricity Act 1989 (c. 29)	In Schedule 16, paragraph 6.
Broadcasting Act 1990 (c. 42)	Sections 168 to 174. Section 180(1). Schedule 16. In Schedule 18, in Part 1, paragraphs 1 and 3.
Vehicle Excise and Registration Act 1994 (c. 22)	In Schedule 3, paragraph 3.
Merchant Shipping Act 1995 (c. 21)	In Schedule 13, paragraph 24.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 48.
Wireless Telegraphy Act 1998 (c. 6)	The whole Act.
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraph 92.
Regulation of Investigatory Powers Act 2000 (c. 23)	Section 73.
Justice (Northern Ireland) Act 2002 (c. 26)	In Schedule 7, paragraph 25.
Communications Act 2003 (c. 21)	Sections 152 to 184. In section 393— (a) subsection (1)(b), and (b) subsection (5)(a), (b) and (l). Section 394(2)(c). Section 402(2)(b). Section 404(4)(b) and (c) and (5). In section 407(1)— (a) paragraph (a), and (b) in paragraph (c) the words “(a) or”. In Schedule 1, paragraphs 1 and 2. Schedules 5 to 7. In Schedule 8, paragraphs 13 to 36. In Schedule 17— (a) paragraphs 6 to 18, (b) paragraphs 32 to 38, (c) paragraphs 64 to 69, (d) paragraph 72(2), and (e) paragraphs 145 to 151. In Schedule 18— (a) paragraph 6, (b) paragraphs 20 and 21,



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<i>Short title and chapter</i>	<i>Extent of repeal</i>
	(c) in paragraph 23, sub-paragraph (1) (c)(i), in sub-paragraph (2) the words “(or that Act of 1949)” and in sub- paragraph (3) the words “section 1F of that Act of 1949 or”, (d) paragraph 55, and (e) paragraph 63. In Schedule 19, Notes 1 and 3.
Criminal Justice Act 2003 (c. 44)	In Schedule 25, paragraph 29.
Serious Organised Crime and Police Act 2005 (c. 15)	In Schedule 16, paragraph 3.

## PART 2

### REVOCATIONS

<i>Title and number</i>	<i>Extent of revocation</i>
Transfer of Functions (Local Government, etc.) (Northern Ireland) Order 1973 (S.R. & O. (N.I.) 1973/256)	In Schedule 1, the entry relating to the Wireless Telegraphy Act 1949. In Schedule 2, the entry relating to the Wireless Telegraphy Act 1949.
Hong Kong (British Nationality) Order 1986 (S.I. 1986/948)	In Schedule 1, the paragraph relating to the Marine, &c., Broadcasting (Offences) Act 1967.
Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))	In Article 26(2), the sub-paragraph (j) relating to section 14(1) of the Wireless Telegraphy Act 1949.
Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15))	In Schedule 2, paragraph 10.
Deregulation (Wireless Telegraphy) Order 1996 (S.I. 1996/1864)	Article 3.
Telecommunications (Licensing) Regulations 1997 (S.I. 1997/2930)	Regulation 4.
Transfer of Functions (Lord Advocate and Advocate General for Scotland) Order 1999 (S.I. 1999/679)	In the Schedule, the entry relating to section 14(7) of the Wireless Telegraphy Act 1949.
Telecommunications (Appeals) Regulations 1999 (S.I. 1999/3180)	Regulation 4.
Courts Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/886)	In the Schedule, paragraph 95.
Wireless Telegraphy (Pre-Consolidation Amendments) Order 2006 (S.I. 2006/1391)	The whole Order.