



Broadcasting Act 1990

1990 CHAPTER 42

PART II

LOCAL DELIVERY SERVICES

Licensing of local delivery services

73 Licensing of local delivery services

- (1) The Commission may grant such licences to provide local delivery services as they may determine.
- (2) Local delivery licences shall authorise the provision of local delivery services for such areas in the United Kingdom as the Commission may determine; and, where such licences authorise the provision of such services to any extent by wireless telegraphy, they shall be so provided on frequencies assigned to those services by the Commission.
- (3) Subject to subsection (4), sections 3, 4 and 5 shall apply to local delivery licences as they apply to licences granted by the Commission under Part I of this Act.
- (4) In the application of those sections to local delivery licences—
 - (a) section 3(1) shall have effect as if the words “or Part II” were added at the end;
 - (b) any reference in any other provision of those sections to Part I of this Act shall be construed as including a reference to this Part of this Act; and
 - (c) section 3(5) shall have effect as if the first reference to section 19(1) included a reference to section 77(1).
- (5) A local delivery licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Commission may impose, to authorise any person to whom this subsection applies to undertake to any extent the provision of the licensed service on behalf of the licence holder.
- (6) Subsection (5) applies to any person who is not a disqualified person in relation to a local delivery licence by virtue of Part II of Schedule 2 to this Act.

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- (7) Any conditions included in a local delivery licence shall apply in relation to the provision of the licensed service to any extent by a person authorised as mentioned in subsection (5) as they apply in relation to the provision of the service by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.

74 Applications for local delivery licences

- (1) Where the Commission propose to grant a licence to provide a local delivery service they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they propose to grant such a licence;
 - (b) specifying—
 - (i) the area in the United Kingdom for which the service is to be provided, and
 - (ii) any frequencies that would be available for it to be provided by wireless telegraphy should it be desired so to provide it;
 - (c) inviting applications for the licence and specifying the closing date for such applications; and
 - (d) specifying—
 - (i) the fee payable on any application made in pursuance of the notice, and
 - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 77(1)(c) if he were granted the licence.
- (2) The Commission may, if they think fit, specify under subsection (1)(d)(ii)—
- (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
 - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(d)(i);
 - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
 - (i) the parts of the area specified under subsection (1)(b)(i) which would be covered by that service,
 - (ii) the timetable in accordance with which that coverage would be achieved,
 - (iii) the technical means by which it would be achieved, and
 - (iv) the extent (if any) to which he proposes that the provision of the service should be undertaken by some other person in accordance with section 73(5);
 - (c) the applicant's cash bid in respect of the licence;
 - (d) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force; and

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- (e) such other information as the Commission may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under subsection (3)(b), (d) or (e).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
 - (a) the name of every person who has made an application to them in pursuance of the notice;
 - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
 - (c) such other information connected with his application as the Commission consider appropriate.
- (7) In this Part—
 - (a) “cash bid”, in relation to a local delivery licence, means an offer to pay to the Commission a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period); and
 - (b) “the appropriate percentage”, in relation to any year, has the meaning given by section 19(10).

75 Procedure to be followed by Commission in connection with consideration of applications for licences

- (1) Where a person has made an application for a local delivery licence in accordance with section 74, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 76 unless it appears to them—
 - (a) that any telecommunication system proposed to be used by the applicant in the provision of his proposed service would be acceptable to the relevant licensing authorities and would be capable of being established in accordance with the timetable indicated by him in the technical plan submitted under section 74(3)(b); and
 - (b) that he would be able to maintain that service throughout the period for which the licence would be in force;and any reference to an applicant in section 76 (except in subsection (12)(b)) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Before forming any view as to whether the requirements of subsection (1)(a) are satisfied in the case of an applicant the Commission shall consult the relevant licensing authorities; and in that provision and this subsection “the relevant licensing authorities” means—

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- (a) where any telecommunication system proposed to be used as mentioned in that provision would be required to be licensed under the Wireless Telegraphy Act 1949, the Secretary of State; and
- (b) where any telecommunication system proposed to be so used would be required to be licensed under Part II of the Telecommunications Act 1984, the Secretary of State and the Director General of Telecommunications.

76 Award of licence to person submitting highest cash bid

- (1) Subject to the following provisions of this section, the Commission shall, after considering all the cash bids submitted by the applicants for a local delivery licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Commission shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) The Commission may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.
- (4) Without prejudice to the generality of subsection (3), the Commission may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to them that the coverage proposed to be achieved by such an applicant, as indicated in the technical plan submitted by him under section 74(3)(b), is substantially greater than that proposed to be achieved—
 - (a) by the applicant who submitted the highest bid, or
 - (b) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids,as indicated in the technical plan submitted by him under that provision; and where it appears to the Commission, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (5) If it appears to the Commission, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
 - (a) they shall refer his application to the Secretary of State, together with—
 - (i) a copy of all documents submitted to them by the applicant, and
 - (ii) a summary of their deliberations on the application; and
 - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant

source of funds is such that it would not be in the public interest for the licence to be so awarded.

- (7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
- (a) paying any amounts payable by him by virtue of section 77(1), or
 - (b) otherwise financing the provision of his proposed service.
- (8) In a case where any requirement such as is mentioned in section 5(1)(b) (as it applies by virtue of section 73(3)) operates to preclude the Commission from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases; and any such rules may provide for the awarding of licences by reference to orders of preference notified to the Commission by applicants at the time of making their applications.
- (9) Any such rules shall be published by the Commission in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.
- (10) Where the Commission are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (16)) have effect as if that person had not made an application for the licence.
- (11) Where the Commission have awarded a local delivery licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and
 - (b) grant the licence to that person.
- (12) The matters referred to in subsection (11)(a) are—
- (a) the name of the applicant to whom the licence has been awarded and the amount of his cash bid;
 - (b) the name of every other applicant in whose case it appeared to the Commission that the requirements of section 75(1)(a) were satisfied;
 - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Commission’s reasons for the licence having been so awarded; and
 - (d) such other information as the Commission consider appropriate.
- (13) If at any time after a local delivery licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Commission that he does not intend to provide the service in question, or
 - (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,
- then, subject to subsections (14) and (16)—

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- (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
 - (ii) this section shall have effect as if he had not made an application for the licence.
- (14) Subsection (13) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (15) In a case where a local delivery licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if—
 - (a) paragraph (b) were omitted; and
 - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (16) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if the Commission decide that it would be desirable to publish a fresh notice under section 74 in respect of the grant of the licence; and similarly this section shall not have effect as mentioned in subsection (13) if the Commission decide that it would be desirable to publish such a notice in respect of the grant of a further licence to provide the local delivery service in question.

77 Additional payments to be made in respect of local delivery licences

- (1) A local delivery licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b), as applied by section 73(3))—
 - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
 - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
 - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 74(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all payments which are received or to be received by him, or by any person connected with him, and are derived from the delivery in that period, in accordance with his licence, of services falling within section 72(2) (whether their delivery is undertaken by him or by any person authorised by him as mentioned in section 73(5)).
- (3) A local delivery licence may include conditions—
 - (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.

- (4) Such a licence may in particular include conditions—
- (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
 - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
 - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (6) Part I of Schedule 7 has effect for the purposes of this section.

78 Duration and renewal of local delivery licences

- (1) A local delivery licence shall, subject to the provisions of this Part, continue in force for a period of fifteen years, and may (subject to the following provisions of this section) be renewed on one or more occasions for a period of fifteen years beginning with the date of renewal.
- (2) An application for the renewal of a local delivery licence under subsection (1) may be made by the licence holder not earlier than five years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a local delivery licence has been duly made to the Commission, they may only (subject to subsection (5)) refuse the application if—
- (a) they propose to grant a fresh local delivery licence for the provision of a service which would be provided for a different area from that for which the applicant’s service is provided under his licence; or
 - (b) in the case of an applicant who has not achieved the coverage set out in the technical plan submitted under section 74(3)(b), either—
 - (i) they are not satisfied that he would, if his licence were renewed, be able to achieve that coverage in accordance with the timetable indicated in the plan, or
 - (ii) the period within which it was to be achieved has expired.
- (5) Section 76(5) to (7) shall apply in relation to an applicant for the renewal of a local delivery licence as those provisions apply in relation to such an applicant as is mentioned in section 76(5), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant’s licence under this section.

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- (6) On the grant of any such application the Commission—
- (a) shall determine an amount which is to be payable to the Commission by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
 - (b) may specify a different percentage from that specified under section 74(1)(d) (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 77(1)(c) during the period for which the licence is to be renewed;
- and the Commission may specify under paragraph (b) either of the things mentioned in section 74(2).
- (7) The amount determined by the Commission under subsection (6)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 77(1)(a) if they were granting a fresh licence to provide the local delivery service in question.
- (8) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) the amount determined by them under subsection (6)(a), and
 - (b) any percentage specified by them under subsection (6)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (9) Where a local delivery licence is renewed under this section—
- (a) any conditions included in it in pursuance of section 77 shall have effect during the period for which the licence has been renewed—
 - (i) as if the amount determined by the Commission under subsection (6) (a) above were an amount specified in a cash bid submitted by the licence holder, and
 - (ii) subject to any determination made under subsection (6)(b) above; and
 - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a local delivery licence is originally in force.
- (10) In this section “the relevant date”, in relation to a local delivery licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 74 if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the local delivery service formerly provided under that licence.