



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

### CHAPTER IV

#### ADDITIONAL SERVICES PROVIDED ON SOUND BROADCASTING FREQUENCIES

##### **Modifications etc. (not altering text)**

- C1** Pt. III: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 5](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### **114 Additional services.**

- (1) In this Part “additional service” means any service which consists in the sending of [<sup>F1</sup>electronic] signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any sound broadcasting service provided—[<sup>F2</sup>on a relevant frequency].
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be [<sup>F3</sup>any part of the signals which—
  - (a) is not required for the purposes of the sound broadcasting service for the purposes of which the frequency has been made available; and
  - (b) is determined by OFCOM to be available for the provision of additional services;]

and references in this Part to spare capacity shall be construed accordingly.

- [<sup>F4</sup>(2A) At any time while an additional services licence is in force, OFCOM may, if they consider it appropriate to do so, modify or further modify the determination made for

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the purposes of that licence under subsection (2)(b); and where there has been such a modification or further modification, the licence shall have effect accordingly.

(2B) A modification or further modification under subsection (2A) must not reduce the amount of spare capacity made available for the licensed services.]

(3) [<sup>F5</sup>OFCOM shall, when determining under subsection (2)] the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency on which a national service is provided, have regard to any need of the person providing that service to be able to use part of the signals carrying it for providing services which are ancillary to programmes included in the service.

(4) A person holding a national licence shall be taken for the purposes of this Part to be authorised by his licence to provide any such services as are mentioned in subsection (3).

<sup>F6</sup>(5) .....

[<sup>F7</sup>(6) In this section “electronic signal” means a signal within the meaning of section 32 of the Communications Act 2003.

(7) In this section and section 115 “relevant frequency” means a frequency made available by OFCOM for the purposes of a sound broadcasting service.]

#### Textual Amendments

- F1** Word in s. 114(1) substituted (25.7.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 52\(2\)\(a\)](#) (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/1900, art. 2(1), [Sch. 1](#)
- F2** Words in s. 114(1) substituted for s. 14(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 52\(2\)\(b\)](#) (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F3** S. 114(2)(a)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 52\(3\)](#) (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F4** S. 114(2A)(2B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 52\(4\)](#) (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F5** Words in s. 114(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 52\(5\)](#) (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F6** S. 114(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F7** S. 114(6)(7) substituted for s. 114(6) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 52\(6\)](#) (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with [art. 11](#))

#### 115 Licensing of additional services.

(1) [<sup>F8</sup>OFCOM] shall do all that they can to secure that, in the case of each [<sup>F9</sup>relevant frequency], all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by [<sup>F8</sup>OFCOM] in accordance with this section.

(2) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.

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- (3) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as [F<sup>8</sup>OFCOM] may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (4) Subsection (3) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act [F<sup>10</sup>and who would not be in contravention of the requirements imposed by or under Schedule 14 to the Communications Act 2003 if he held such a licence].
- (5) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (3) as they apply in relation to the provision of such services 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.
- (6) Every licence to provide a national service shall include such conditions as appear to [F<sup>8</sup>OFCOM] to be appropriate for securing that the licence holder grants—
  - (a) to any person who holds a licence to provide additional services on the frequency on which that national service is provided, and
  - (b) to any person who is authorised by any such person as mentioned in subsection (3) to provide additional services on that frequency,access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.
- (7) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (6) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by [F<sup>8</sup>OFCOM].
- (8) The holder of a licence to provide a [F<sup>11</sup>local or restricted service or to provide a radio licensable content service] shall be taken for the purposes of this Part to be authorised by his licence to provide, or to authorise another person to provide, additional services on the frequency on which the licensed service is provided.
- (9) In this Part “additional services licence” means a licence to provide additional services.

#### Textual Amendments

- F8** Words in s. 115 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F9** Words in s. 115(1) substituted for s. 115(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F10** Words in s. 115(4) inserted (18.9.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), art. 2(2), [Sch. 2](#)
- F11** Words in s. 115(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## 116 Applications for additional services licences.

- (1) Where [F<sup>12</sup>OFCOM] propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—

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- (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the period for which the licence is to be granted,
    - (ii) the sound broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (iii) <sup>F13</sup>... the extent and nature of the spare capacity which is to be allocated by the licence;
  - (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 118(1)(c) if he were granted the licence.
- (2) [<sup>F12</sup>OFCOM] 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 indicating—
    - (i) the nature of any additional services which the applicant proposes to provide, and
    - (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 115(3);
  - (c) the applicant's cash bid in respect of the licence; and
  - (d) such information as [<sup>F12</sup>OFCOM] 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.
- (4) At any time after receiving such an application and before determining it [<sup>F12</sup>OFCOM] may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to [<sup>F12</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [<sup>F12</sup>OFCOM] 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 [<sup>F12</sup>OFCOM] consider appropriate.

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### Textual Amendments

- F12** Words in s. 116 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 54\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F13** Words in s. 116(1)(b)(iii) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 54\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## 117 Procedure to be followed by Authority in connection with consideration of applications for, and awarding of, licences.

- (1) Where a person has made an application for an additional services licence in accordance with section 116, <sup>F14</sup>[OFCOM] shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—
- <sup>F15</sup>(a) that the technical plan submitted under section 116(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and]
- (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;

and any reference to an applicant in section 100 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to <sup>F14</sup>[OFCOM] that the requirements of paragraphs (a) and (b) above are satisfied.

<sup>F16</sup>(2) .....

- (3) Subject to subsection (4), section 100 shall apply in relation to an additional services licence as it applies in relation to a national licence.
- (4) In the application of section 100 in relation to an additional services licence—
- (a) subsection (6) shall have effect with the substitution in paragraph (a) of a reference to section 118(1) for the reference to section 102(1); and
- (b) subsection (9) shall have effect with the substitution in paragraph (b) of a reference to the requirement specified in subsection (1)(a) above for the reference to the requirement specified in section 99(1)(a).
- (5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to <sup>F14</sup>[OFCOM] that none of the services in question will be provided once the licence has come into force, or
- (b) <sup>F14</sup>[OFCOM] for any other reason have reasonable grounds for believing that none of those services will be so provided,

then, subject to subsection (6)—

- (i) <sup>F14</sup>[OFCOM] shall serve on him a notice revoking the licence as from the time the notice is served on him, and
- (ii) section 100 (as applied by subsection (3) above) shall, subject to section 100(11), have effect as if he had not made an application for the licence.

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- (6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless [<sup>F14</sup>OFCOM] have served on him a notice stating their grounds for believing that none of the services in question will be provided 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.

<sup>F17</sup>(7) .....

#### Textual Amendments

- F14** Words in s. 117 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 55\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F15** S. 117(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 55\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F16** S. 117(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 55\(4\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F17** S. 117(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 55\(4\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## 118 Additional payments to be made in respect of additional services licences.

- (1) An additional services licence shall include conditions requiring the licence holder to pay to [<sup>F18</sup>OFCOM] (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
- (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 116(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 amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
- (a) enabling [<sup>F18</sup>OFCOM] 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 [<sup>F18</sup>OFCOM] 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.

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(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.

**Textual Amendments**

**F18** Words in s. 118 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 56](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**119 Additional services not to interfere with other transmissions.**

- (1) An additional services licence may include such conditions as [<sup>F19</sup>OFCOM] consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
- (a) the sound broadcasting service or services on whose frequency or frequencies it is provided, or
  - (b) any other wireless telegraphy transmissions.

<sup>F20</sup>(2) .....

**Textual Amendments**

**F19** Words in s. 119(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 57\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F20** S. 119(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 57\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**120 Enforcement of additional services licences.**

- (1) If [<sup>F21</sup>OFCOM] are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by [<sup>F21</sup>OFCOM] under or by virtue of any provision of this Part, they may (subject to subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to [<sup>F21</sup>OFCOM].

[<sup>F22</sup>(1A)] The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be

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construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

- (1C) Section 118(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.]
- (3) [<sup>F21</sup>OFCOM] shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Section 111 shall apply in relation to an additional services licence as it applies in relation to a licence granted under Chapter II of this Part, but with the omission of subsection (7).

#### **Textual Amendments**

- F21** Words in s. 120 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 58](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F22** S. 120(1A)-(1C) substituted for s. 120(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 8](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### **Modifications etc. (not altering text)**

- C2** S. 120(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, [Sch. para. 3\(f\)](#) (with art. 5)



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