



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 2

SPECTRUM USE

Recognised spectrum access

159 Grant of recognised spectrum access

- (1) This section applies where—
- (a) a person is proposing to use or to continue to use a station or apparatus for wireless telegraphy;
 - (b) the circumstances of the use are circumstances specified for the purposes of this section in regulations made by OFCOM;
 - (c) that use does not require a wireless telegraphy licence but will involve the emission of electro-magnetic energy with a view to the reception of anything at places in the United Kingdom or in the territorial waters adjacent to the United Kingdom;

and for the purposes of this section it is immaterial whether the emissions are from a place within the United Kingdom or from a place outside the United Kingdom.

- (2) On an application by that person, OFCOM may make a grant of recognised spectrum access in respect of any use by him of anything for wireless telegraphy that is specified in the grant.
- (3) A grant of recognised spectrum access made to a person shall set out, by reference to such factors as OFCOM think fit (including, so far as they think fit, frequencies, times

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and places of reception and strength and type of signal), the respects in which the use of anything by that person for wireless telegraphy is recognised by the grant.

- (4) A grant of recognised spectrum access to a person is made by giving him a notification containing the grant.
- (5) A grant of recognised spectrum access may be made subject to such restrictions and conditions as OFCOM think fit, including, in particular, restrictions or conditions as to strength or type of signal, as to times of use and as to the sharing of frequencies.
- (6) The restrictions and conditions of a grant of recognised spectrum access made to a person must not duplicate obligations already imposed on him by general conditions set under section 45.
- (7) Where a grant of recognised spectrum access is made subject to restrictions and conditions, the restrictions and conditions must be set out in the notification by which the grant is made.
- (8) Schedule 5 (which makes provision about the grant, revocation and modification of recognised spectrum access) shall have effect.
- (9) Section 403 applies to the power of OFCOM to make regulations under subsection (1).
- (10) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act.

160 Effect of grant of recognised spectrum access

- (1) This section applies to the following functions of OFCOM—
 - (a) their functions under section 1 of the Wireless Telegraphy Act 1949 (c. 54) (licensing of the use of the radio spectrum) with respect to the granting of wireless telegraphy licences;
 - (b) their functions under section 159 of this Act with respect to the making of grants of recognised spectrum access; and
 - (c) any of their other functions under the enactments relating to the management of the radio spectrum in the carrying out of which it is appropriate for them to have regard to—
 - (i) whether wireless telegraphy licences are in force; or
 - (ii) the terms, provisions or limitations of wireless telegraphy licences that are for the time being in force.
- (2) In carrying out the functions to which this section applies it shall be the duty of OFCOM to take into account—
 - (a) the existence of any grant of recognised spectrum access that is for the time being in force, and
 - (b) the provisions imposing the restrictions and conditions subject to which the grant has effect,

to the same extent as they would take into account a wireless telegraphy licence with terms, provisions or limitations making equivalent provision.

161 Charges in respect of grants of recognised spectrum access

- (1) The Wireless Telegraphy Act 1998 (c. 6) (which makes provision about the sums that may be charged in respect of the issue and renewal of wireless telegraphy licences etc.) shall be amended as follows.
- (2) In section 1 (charges for wireless telegraphy licences)—
 - (a) in subsection (1), after “this Act” there shall be inserted—
 - “(a) references to a grant of recognised spectrum access are references to a grant made under section 159 of the Communications Act 2003 (recognised spectrum access); and
 - (b)”;
 - (b) in subsection (2), for the words from “or renewal”, where they first occur, to “is issued” there shall be substituted “of a wireless telegraphy licence or the making of a grant of recognised spectrum access and, where regulations under this section so provide, subsequently at such times during the term of the licence or grant and such times in respect of its variation, modification or revocation, as may be prescribed by the regulations, there shall be paid to OFCOM by the person to whom the licence is issued or the grant made”; and
 - (c) in subsection (4), for the words from “or renewal”, where they first occur, to “the licence” there shall be substituted “of a licence or the making of a grant of recognised spectrum access, OFCOM may, on the issue of the licence or the making of the grant,”.
- (3) After section 3 of that Act there shall be inserted the following section—

“3A Bidding for grants of recognised spectrum access

- (1) Having regard to the desirability of promoting the optimal use of the electromagnetic spectrum, OFCOM may by regulations provide that, in such cases as may be specified in the regulations, applications for grants of recognised spectrum access must be made in accordance with a procedure which involves the making by the applicant of a bid specifying an amount which he is willing to pay to OFCOM in respect of the grant.
- (2) Regulations under this section may make provision with respect to the grants to which they apply and the restrictions and conditions subject to which such grants are made.
- (3) The regulations may, in particular—
 - (a) require the applicant’s bid to specify the amount which he is willing to pay;
 - (b) require that amount to be expressed—
 - (i) as a cash sum;
 - (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the use of wireless telegraphy to which the grant relates);
 - (iii) as a combination of the two; or
 - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;

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- (c) require that amount to be expressed in terms of—
 - (i) the making of a single payment;
 - (ii) the making of periodic payments;
 - (iii) a combination of the two; or
 - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
 - (d) specify requirements (such as, for example, technical or financial requirements, requirements relating to the use of wireless telegraphy to which the grant relates and requirements intended to restrict the holding of two or more grants of recognised spectrum access by any one person) which must be met by applicants for a grant;
 - (e) require any such applicant to pay a deposit to OFCOM;
 - (f) specify circumstances in which such a deposit is, or is not, to be refundable;
 - (g) specify matters to be taken into account by OFCOM (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to make a grant of recognised spectrum access;
 - (h) specify the other restrictions and conditions subject to which a grant to which the regulations apply is to be made; and
 - (i) make any provision referred to in section 1(3).
- (4) Regulations under this section are not to be construed as binding OFCOM to make a grant on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.
- (5) A grant of recognised spectrum access made in accordance with regulations under this section shall specify either—
- (a) the sum or sums which in consequence of the bids made are, in accordance with the regulations, to be payable in respect of the grant; or
 - (b) the method for determining that sum or those sums;
- and that sum or those sums shall be paid to OFCOM by the person to whom the grant is made in accordance with the conditions of the grant.
- (6) In determining the sum or sums payable in respect of a grant, regard may be had to bids made for other grants of recognised spectrum access and for wireless telegraphy licences.
- (7) Regulations under this section may provide that where a person—
- (a) makes an application for a grant of recognised spectrum access in accordance with a procedure provided for by such regulations, but
 - (b) subsequently refuses the grant applied for,
- that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the grant.
- (8) Subsection (4) of section 1 is to apply in relation to sums that will or may become payable under regulations under this section subsequently to the making of a grant of recognised spectrum access as it applies to sums that will or may become payable under regulations under that section.”

162 Conversion into and from wireless telegraphy licences

- (1) OFCOM may by regulations make provision for—
 - (a) the conversion, on the application of the licence holder, of a wireless telegraphy licence into a grant of recognised spectrum access; and
 - (b) the conversion, on the application of the holder of the grant, of a grant of recognised spectrum access into a wireless telegraphy licence.
- (2) Section 403 applies to the power of OFCOM to make regulations under this section.