



Communications Act 2003

2003 CHAPTER 21

PART 3

TELEVISION AND RADIO SERVICES

CHAPTER 2

REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES

Reviews relating to licensing of Channels 3 & 5 and teletext

225 Application for review of financial terms of replacement licences

- (1) The holder of a replacement licence granted under section 215 or 221 may apply to OFCOM, at any time in the first or any subsequent review period, for a review of the financial terms on which that licence is held.
- (2) For the purposes of this section the first review period is the period which—
 - (a) begins four years before the first notional expiry date; and
 - (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the first notional expiry date.
- (3) For the purposes of this section a subsequent review period in the case of a replacement licence is so much (if any) of the following period as falls before the end of the initial expiry date, namely, the period which—
 - (a) begins four years before a subsequent notional expiry date; and
 - (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from that notional expiry date.
- (4) A determination for the purposes of subsection (2)(b) or (3)(b) in respect of a replacement licence—

Status: This is the original version (as it was originally enacted).

- (a) must be made at least one year before the day determined; and
 - (b) must be notified by OFCOM to the person who, at the time of the determination, holds the licence in question.
- (5) No application under this section for a review of the financial terms on which a replacement licence is held is to be made—
- (a) at any time when an application under section 226 for a review of those terms is pending; or
 - (b) at any time in the period of twelve months following the day on which a determination by OFCOM on such an application is notified to the licence holder.
- (6) For the purposes of this section an application for a review under section 226 is pending from the time when the application is made until the end of the day on which OFCOM's determination on the review is notified to the licence holder.
- (7) In this section—
- “the first notional expiry date”, in relation to a replacement licence, means the date with which (apart from this Act) the existing licence would have expired if not renewed;
 - “subsequent notional expiry date”, in relation to a replacement licence, means—
 - (a) in a case in which an application by the licence holder for a review under this section was made during the review period beginning four years before the last notional expiry date, the tenth anniversary of the date on which OFCOM's determination on that review was notified to the licence holder; and
 - (b) in any other case, the tenth anniversary of the last notional expiry date;
 - “tender notice” means a notice under section 15(1) of the 1990 Act or (as the case may be) paragraph 1 of Schedule 10.
- (8) In subsection (7) “existing licence” has the same meaning as in section 215 or (as the case may be) 221.

226 Application for review of financial terms in consequence of new obligations

- (1) This section applies where an order is made under section 411 that brings section 272, 273 or 274 (or any two or more of them) into force for the purpose of including conditions in the regulatory regime for—
- (a) a Channel 3 service;
 - (b) Channel 5; or
 - (c) the public teletext service.
- (2) The holder of a licence in which conditions mentioned in section 272, 273 or 274 will fall to be included when the order comes into force may apply to OFCOM, at any time in the review period, for a review of the financial terms on which the licence is held.
- (3) For the purposes of this section the review period in the case of an order under section 411 is the period which—
- (a) begins with the day on which the order is made; and
 - (b) ends with the time at which, by virtue of the order, one or more of sections 272, 273 and 274 come into force in the case of the licence in question.

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

- (4) If in the case of the same order there is more than one time falling within subsection (3) (b), the review period ends with the later or latest of them.

227 Reviews under ss. 225 and 226

- (1) This section applies where an application is made under section 225 or 226 for a review of the financial terms on which a licence is held.
- (2) As soon as reasonably practicable after receiving the application, OFCOM must—
- (a) determine the amount to be paid to them under the conditions of the licence for the first calendar year falling wholly or partly within the period under review to begin after the application date; and
 - (b) determine the percentage to be used for computing the payments to be made to them under those conditions in respect of each accounting period falling within the period under review to begin after that date.
- (3) The amount determined under subsection (2)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence being granted afresh on an application made in accordance with—
- (a) section 15 of the 1990 Act (licences for Channel 3 service or Channel 5); or
 - (b) paragraph 3 of Schedule 10 to this Act.
- (4) The determination required by subsection (2)(b) is a determination of the percentage of qualifying revenue for each accounting period that is to be paid to OFCOM.
- (5) For the purposes of subsection (2)(b)—
- (a) different percentages may be determined for different accounting periods; and
 - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (6) In making their determinations on an application under section 226 OFCOM are to have regard, in particular, to any additional costs that are likely to be incurred by the licence holder in consequence of the commencement of so much of section 272, 273 or 274 (or any two or more of them) as is brought into force by the commencement order in question.
- (7) References in this section to qualifying revenue for an accounting period are to be construed—
- (a) in the case of the holder of a licence to provide a Channel 3 service or Channel 5, in accordance with section 19 of and Part 1 of Schedule 7 to the 1990 Act; and
 - (b) in the case of the holder of the licence to provide the public teletext service, in accordance with Part 3 of Schedule 10 to this Act.
- (8) In this section—
- “the application date”, in relation to a review, means the date of the making under section 225 or 226 of the application for the review; and
- “the period under review”, in relation to a review of the financial terms of a licence, means so much of the period for which the licence will (if not renewed) continue in force after the application date.

228 Giving effect to reviews under ss. 225 and 226

- (1) As soon as reasonably practicable after making a determination under section 227 on an application under section 225 or 226, OFCOM must give a notification of their determination to the applicant.
- (2) The notification must set out—
 - (a) the determination made by OFCOM;
 - (b) the modifications of the applicant’s licence that are required to give effect to the determination;
 - (c) a date by which the applicant must notify OFCOM whether or not he accepts the determination and modifications; and
 - (d) a subsequent date by which the applicant’s licence will cease to have effect if he does not.
- (3) The modifications set out in accordance with subsection (2)(b) must secure that the amount falling to be paid under the conditions of the applicant’s licence for each calendar year subsequent to that for which an amount has been determined in accordance with section 227(2)(a) is the amount so determined as increased by the appropriate percentage.
- (4) In the case of a determination on an application under section 225, the date specified in accordance with subsection (2)(d) must not fall before whichever is the earlier of—
 - (a) the next notional expiry date after the application for the review; and
 - (b) the end of the licensing period in which that application was made.
- (5) Where the applicant notifies OFCOM that he accepts the determination—
 - (a) his licence is to have effect with the modifications set out in OFCOM’s notification; and
 - (b) all such adjustments by way of payment or repayment as may be necessary for giving effect to the modifications are to be made in respect of any payments already made for years or periods affected by the modifications.
- (6) Where the applicant does not, before the date specified in accordance with paragraph (c) of subsection (2), notify OFCOM that he accepts the determination, his licence shall have effect as if the period for which it is to continue in force ended with the time specified in accordance with paragraph (d) of that subsection.
- (7) Where the time at which a licence would cease to have effect in accordance with subsection (6) is the end of a licensing period, that subsection does not affect any rights of the licence holder with respect to the renewal of his licence from the end of that period.
- (8) In this section—

“the appropriate percentage” has the same meaning as in section 19 of the 1990 Act;

“licensing period” means—

 - (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
 - (b) any subsequent period of ten years beginning with the end of the previous licensing period;

“notional expiry date” means a first or subsequent notional expiry date within the meaning of section 225.

229 Report in anticipation of new licensing round

- (1) OFCOM must, in anticipation of the end of each licensing period—
 - (a) prepare a report under this section; and
 - (b) submit it to the Secretary of State no later than thirty months before the end of that period.
- (2) A report under this section must set out OFCOM’s opinion on the effect of each of the matters mentioned in subsection (3) on the capacity of the holders of relevant licences to contribute, in the next licensing period, to the fulfilment of the purposes of public service television broadcasting in the United Kingdom at a cost to the licence holders that is commercially sustainable.
- (3) Those matters are—
 - (a) the arrangements that (but for an order under section 230) would allow for the renewal of relevant licences from the end of the current licensing period; and
 - (b) the conditions included in the regulatory regimes for the services provided under relevant licences.
- (4) A report under this section must also include the recommendations (if any) which OFCOM consider, in the light of the opinion set out in the report, should be made to the Secretary of State for the exercise by him of—
 - (a) his power under section 230; or
 - (b) any of the powers to make statutory instruments that are conferred on him by Chapter 4 of this Part.
- (5) Where the Secretary of State makes an order under section 224 after receiving a report under this section in anticipation of the end of the licensing period that is extended by the order—
 - (a) he may require OFCOM to prepare a supplementary report in the light of the postponement of the beginning of the next licensing period; and
 - (b) it shall be the duty of OFCOM, within such period as may be specified by the Secretary of State, to prepare the required supplementary report and to submit it to him.
- (6) In this section—

“licensing period” means—

 - (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
 - (b) any subsequent period of ten years beginning with the end of the previous licensing period;

“relevant licence” means—

 - (a) a licence to provide a Channel 3 service;
 - (b) a licence to provide Channel 5; or
 - (c) the licence to provide the public teletext service.

230 Orders suspending rights of renewal

- (1) This section applies where the Secretary of State has received and considered a report submitted to him by OFCOM under section 229.
- (2) If—

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

- (a) the report contains a recommendation by OFCOM for the making of an order under this section, or
 - (b) the Secretary of State considers, notwithstanding the absence of such a recommendation, that it would be appropriate to do so,he may by order provide that licences for the time being in force that are of the description specified in the order are not to be renewable under section 216 or 222 from the end of the licensing period in which he received the report.
- (3) An order under this section preventing the renewal of licences from the end of a licensing period must be made at least eighteen months before the end of that period.
- (4) The Secretary of State is not to make an order under this section preventing the renewal of licences from the end of the initial licensing period unless he has fixed a date before the end of that period as the date for digital switchover.
- (5) Where the Secretary of State postpones the date for digital switchover after making an order under this section preventing the renewal of licences from the end of the initial licensing period, the order shall have effect only if the date to which digital switchover is postponed falls before the end of that period.
- (6) Subsection (5) does not affect the power of the Secretary of State to make another order under this section after postponing the date for digital switchover.
- (7) An order under this section with respect to Channel 3 licences must be an order of one of the following descriptions—
 - (a) an order applying to every licence to provide a Channel 3 service;
 - (b) an order applying to every licence to provide a national Channel 3 service; or
 - (c) an order applying to every licence to provide a regional Channel 3 service.
- (8) An order under this section does not affect—
 - (a) the person to whom a licence may be granted on an application made under section 15 of the 1990 Act or under paragraph 3 of Schedule 10 to this Act; or
 - (b) rights of renewal in respect of licences first granted so as to take effect from the beginning of a licensing period beginning after the making of the order, or from a subsequent time.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) Subsection (8) of section 224 applies for construing references in this section to the date for digital switchover as it applies for the purposes of that section.
- (11) In this section—
 - “initial licensing period” means the licensing period ending with the initial expiry date; and
 - “licensing period” has the same meaning as in section 229.