



Digital Economy Act 2010

2010 CHAPTER 24

Access to electromagnetic spectrum

38 Payment for licences

- (1) Section 12 of the Wireless Telegraphy Act 2006 (charges for grant of licence) is amended as follows.
- (2) In subsection (5) at the end insert “, but this is subject to subsection (6).”
- (3) After subsection (5) insert—
 - “(6) Regulations under or for the purposes of subsection (1)(b), so far as it relates to payments during the term of a licence, may be made so as to apply in relation to a licence granted in accordance with regulations under section 14, but only in the following cases—
 - (a) where provision included in the licence with the consent of the holder of the licence provides for the regulations to apply;
 - (b) where the licence includes terms restricting the exercise by OFCOM of their power to revoke the licence before the end of a period and that period has expired;
 - (c) where the licence would, but for a variation, have ceased to have effect at the end of a period and that period has expired;
 - (d) where the licence is a surrendered-spectrum licence.
- (7) Provision may not be made by virtue of subsection (6)(c) or (d) without the consent of the Secretary of State.
- (8) A wireless telegraphy licence is a “surrendered-spectrum licence” if —
 - (a) it is granted under arrangements involving (before the grant or later) the variation, revocation or expiry of another wireless telegraphy licence;
 - (b) the arrangements are with a view to enabling the holder of that other licence to comply with a limit applying to frequencies in respect of which a person may hold licences; and

- (c) it authorises the use after that variation, revocation or expiry of a frequency whose use until then was or is authorised by that other licence.
- (9) In relation to a surrendered-spectrum licence there may be more than one such other licence (“predecessor licence”) and a licence may be a predecessor licence to more than one surrendered-spectrum licence.”
- (4) Section 14 of the Wireless Telegraphy Act 2006 (bidding for licences) is amended as follows.
- (5) In subsection (5) after “those sums must” insert “, subject to subsection (5A),”.
- (6) After subsection (5) insert—
 - “(5A) The regulations may, with the consent of the Secretary of State, make provision permitting or requiring a surrendered-spectrum licence to which the regulations apply to include—
 - (a) provision requiring all or part of a sum that would otherwise be payable to OFCOM under subsection (5) to be paid to a person who was or is the holder of a predecessor licence;
 - (b) provision requiring a sum in addition to that payable to OFCOM under subsection (5) to be paid to such a person;
 - (c) provision specifying any such sum or part or the method for determining it.”
- (7) After subsection (8) insert—
 - “(9) In subsection (5A) “surrendered-spectrum licence” and “predecessor licence” have the meaning given by section 12(8) and (9).”

39 Enforcement of licence terms etc

- (1) In Chapter 4 of Part 2 of the Wireless Telegraphy Act 2006 (enforcement of regulation of radio spectrum) after section 43 insert—

“43A Special procedure for contraventions of certain provisions

- (1) OFCOM may impose a penalty on a person if—
 - (a) that person is or has been in contravention in any respect of a provision, term or limitation of a wireless telegraphy licence;
 - (b) OFCOM have notified that person that it appears to them that the provision, term or limitation has been contravened in that respect;
 - (c) this section applies to that contravention by virtue of provision included in the licence; and
 - (d) that contravention is not one in respect of which proceedings for an offence under this Chapter have been brought against that person.
- (2) A licence may provide in accordance with subsection (1)(c) that this section applies to the contravention of a provision, term or limitation only if it appears to OFCOM that a direction under section 5 requires the provision, term or limitation to be included in the licence.
- (3) Where OFCOM impose a penalty on a person under this section, they must—

- (a) notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (4) A penalty imposed under this section—
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (5) No proceedings for an offence under this Chapter may be commenced against a person in respect of a contravention in respect of which a penalty has been imposed by OFCOM under this section.
- (6) The amount of a penalty imposed under this section is to be such amount not exceeding 10 per cent of the relevant amount of gross revenue as OFCOM think—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.”
- (2) In section 44 of that Act (relevant amount of gross revenue), in subsections (1) and (10), after “43” insert “or 43A”.
- (3) In section 400 of the Communications Act 2003 (destination of licence fees and penalties), in subsection (1)(d), after “42” insert “or 43A”.