



Wireless Telegraphy Act 2006

2006 CHAPTER 36

PART 2

REGULATION OF RADIO SPECTRUM

CHAPTER 1

WIRELESS TELEGRAPHY LICENCES

Licensing of wireless telegraphy

8 Licences and exemptions

- (1) It is unlawful—
 - (a) to establish or use a wireless telegraphy station, or
 - (b) to instal or use wireless telegraphy apparatus,except under and in accordance with a licence (a “wireless telegraphy licence”) granted under this section by OFCOM.
 - (2) Subsection (1) does not apply to—
 - (a) the use of a television receiver (within the meaning of Part 4 of the Communications Act 2003) for receiving a television programme; or
 - (b) the installation of a television receiver for use solely for that purpose.
 - (3) OFCOM may by regulations exempt from subsection (1) the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus of such classes or descriptions as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be so specified.
- [^{F1}(3A) OFCOM may not make regulations under subsection (3) specifying terms, provisions or limitations in relation to the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus for the provision of an electronic communications network or electronic communications service unless the terms,

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provisions or limitations are of a kind falling within Part A of the Annex to Directive 2002/20/ EC of the European Parliament and of the Council.

- (3B) Terms, provisions and limitations specified in regulations under subsection (3) must be—
- (a) objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate,
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons,
 - (c) proportionate to what they are intended to achieve, and
 - (d) in relation to what they are intended to achieve, transparent.]
- (4) If OFCOM are satisfied that [^{F2}the conditions in subsection (5) are] satisfied as respects the use of stations or apparatus of a particular description, they must make regulations under subsection (3) exempting the establishment, installation and use of a station or apparatus of that description from subsection (1).
- [^{F3}(5) The conditions are that the use of stations or apparatus of that description is not likely to —
- (a) involve undue interference with wireless telegraphy;
 - (b) have an adverse effect on technical quality of service;
 - (c) lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
 - (d) endanger safety of life;
 - (e) prejudice the promotion of social, regional or territorial cohesion; or
 - (f) prejudice the promotion of cultural and linguistic diversity and media pluralism.]

Textual Amendments

- F1** S. 8(3A)(3B) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 4(a)** (with Sch. 3 para. 2)
- F2** Words in s. 8(4) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 4(b)** (with Sch. 3 para. 2)
- F3** S. 8(5) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 4(c)** (with Sch. 3 para. 2)

[^{F4}8A. Review of long licences

- (1) Subsection (2) applies in respect of a wireless telegraphy licence where—
- (a) the licence is granted for a period of 10 years or more; and
 - (b) the rights and obligations under it may not be transferred to another person.
- (2) OFCOM must, at such intervals as they consider appropriate, or at the reasonable request of the holder of the licence—
- (a) review whether the conditions in section 8(5) are met in relation to the use of a wireless telegraphy station or wireless telegraphy apparatus under the licence, and
 - (b) if the conditions are met, make regulations under section 8(3) exempting the establishment, installation or use of stations or apparatus of that description from section 8(1).

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- (3) The first review under this section, and the making of any regulations under section 8(3) in consequence of the review, must be completed on or before 19 December 2011.

Textual Amendments

- F4** Ss. 8A-8C inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 5** (with Sch. 3 para. 2)

8B. Restriction on grant of exclusive licence

- (1) OFCOM may not grant an exclusive licence unless a condition in subsection (2) is met.
- (2) Those conditions are—
- (a) that it is necessary to grant an exclusive licence in order to protect safety of life services, or
 - (b) that there are other exceptional circumstances which, in OFCOM's opinion, justify the grant of an exclusive licence in order to ensure a general interest objective.
- (3) The general interest objectives are—
- (a) safety of life;
 - (b) the promotion of social, regional or territorial cohesion;
 - (c) avoidance of inefficient use of frequencies;
 - (d) the promotion of cultural and linguistic diversity and media pluralism;
 - (e) fulfilment of a requirement under the ITU Radio Regulations.
- (4) In subsection (3) “the ITU Radio Regulations” means the radio regulations of the International Telecommunication Union.
- (5) If OFCOM grant an exclusive licence they must—
- (a) at such intervals as they consider appropriate, review whether a condition in subsection (2) continues to be met, and
 - (b) publish the outcome of the review in such manner as they think fit.
- (6) In this section and section 8C, “exclusive licence” means a wireless telegraphy licence which includes a term conferring exclusive rights on the holder to use a frequency specified in the licence (throughout the United Kingdom or in a specified part of the United Kingdom).

Textual Amendments

- F4** Ss. 8A-8C inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 5** (with Sch. 3 para. 2)

8C. Consultation before grant of exclusive licence

- (1) This section applies where—
- (a) OFCOM propose to grant an exclusive licence, and

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- (b) they think that the grant of the licence would have a significant impact on a market for the use of the electromagnetic spectrum for wireless telegraphy in relation to which OFCOM have functions under the enactments relating to the management of the radio spectrum.
- (2) Before granting the licence OFCOM must publish, in such manner as they think fit, notice of their intention to grant the licence.
- (3) The notice must specify—
 - (a) OFCOM's reasons for proposing to grant an exclusive licence, and
 - (b) the period within which representations may be made to OFCOM.
- (4) The period specified under subsection (3)(b) may not be less than one month beginning with the day on which the notice is published.]

Textual Amendments

F4 Ss. 8A-8C inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 5** (with Sch. 3 para. 2)

9 Terms, provisions and limitations

- (1) A wireless telegraphy licence may be granted subject to such terms, provisions and limitations as OFCOM think fit.
- [^{F5}(1A) But a licence in relation to the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus for the provision of an electronic communications network or electronic communications service may not be made subject to a term, provision or limitation unless the term, provision or limitation is of a kind falling within Part B of the Annex to Directive [2002/20/ EC](#) of the European Parliament and of the Council.]
- (2) In the case of a licence to establish a station, the limitations may, in particular, include limitations as to—
 - (a) the position and nature of the station;
 - (b) the purpose for which, the circumstances in which and the persons by whom the station may be used;
 - (c) the apparatus that may be installed or used in the station.
- (3) In the case of any other licence, the limitations may, in particular, include limitations as to—
 - (a) the apparatus that may be installed or used;
 - (b) the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used.
- (4) The terms, provisions and limitations may also include, in particular—
 - (a) terms, provisions and limitations as to strength or type of signal, as to times of use and as to the sharing of frequencies;
 - (b) terms, provisions or limitations imposing prohibitions on the transmission or broadcasting of particular matters by the holder of the licence;
 - (c) terms or provisions requiring the transmission or broadcasting of particular matters by that person.

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- [^{F6}(d) terms, provisions or limitations requiring a satellite uplinker to suspend or cease uplinking, by means of satellite uplink apparatus, a service named by OFCOM in a notice given to the satellite uplinker under section 9A;
- (e) terms or provisions requiring a satellite uplinker to provide OFCOM with such information necessary for the purpose of determining whether section 9A applies in relation to a service uplinked by the satellite uplinker or for any purpose connected with the giving of a notice under section 9A as OFCOM may request by a notice in writing.]
- (5) A wireless telegraphy licence may be granted—
- (a) in relation to a particular station or particular apparatus; or
- (b) in relation to any station or apparatus falling within a description specified in the licence;
- and such a description may be expressed by reference to such factors (including factors confined to the manner in which it is established, installed or used) as OFCOM think fit.
- (6) The terms, provisions and limitations of a wireless telegraphy licence granted to a person must not duplicate obligations already imposed on him by general conditions set under section 45 of the Communications Act 2003 (c. 21) (power of OFCOM to set conditions in relation to electronic communications networks and services).
- (7) In imposing terms, provisions or limitations on a wireless telegraphy licence, OFCOM may impose only those that they are satisfied are—
- (a) objectively justifiable in relation to the networks and services to which they relate;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what they are intended to achieve; and
- (d) in relation to what they are intended to achieve, transparent.
- (8) This section has effect subject to [^{F7}section 9ZA and to] regulations under section 14.

Textual Amendments

- F5** S. 9(1A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 6(a)** (with Sch. 3 para. 2)
- F6** S. 9(4)(d)(e) inserted (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **13(2)**
- F7** Words in s. 9(8) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 6(b)** (with Sch. 3 para. 2)

[^{F8}9ZA. Restrictions on imposition of limitations etc under section 9

- (1) OFCOM may grant a wireless telegraphy licence subject to a limitation on the nature of a station that may be established or used, or the apparatus that may be installed or used, only if the limitation is necessary for a purpose specified in subsection (2).
- (2) Those purposes are—
- (a) avoiding undue interference with wireless telegraphy;
- (b) the protection of public health against electromagnetic fields;

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- (c) ensuring technical quality of service;
 - (d) ensuring maximisation of frequency sharing;
 - (e) safeguarding the efficient management and use of the part of the electromagnetic spectrum available for wireless telegraphy;
 - (f) ensuring the fulfilment of a general interest objective.
- (3) OFCOM may grant a wireless telegraphy licence incorporating a provision requiring the use of a specified frequency for the activity authorised by the licence only if the requirement is imposed in order to ensure the fulfilment of a general interest objective.
- (4) In this section “general interest objective” has the meaning given by section 8B(3).
- (5) Subsection (6) applies where OFCOM think that the imposition of a limitation or provision within subsection (1) or (3) in relation to a wireless telegraphy licence would have a significant impact on a market for the use of the electromagnetic spectrum for wireless telegraphy in relation to which OFCOM have functions under the enactments relating to the management of the radio spectrum.
- (6) Before deciding whether to impose the limitation or provision, OFCOM must consult the applicant for the licence and must take any representations into account.
- (7) If OFCOM have imposed limitations or provisions under subsection (1) or (3) in relation to a wireless telegraphy licence, they must, at such intervals as they consider appropriate—
- (a) review whether those limitations or provisions are necessary, and
 - (b) publish the outcome of the review in such manner as they think fit.
- (8) But subsection (7) does not apply to a provision requiring the use of a specified frequency for the activity authorised by the licence where the licence holder has an opportunity to ask for a different frequency to be specified.

Textual Amendments

F8 Ss. 9ZA, 9ZB inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), [Sch. 2 para. 7](#) (with [Sch. 3 para. 2](#))

9ZB. Review of pre-26 May 2011 limitations etc.

- (1) This section applies where OFCOM have imposed limitations or provisions of a kind falling within section 9ZA(1) or (3) in relation to a wireless telegraphy licence granted on or before 25 May 2011.
- (2) As soon as reasonably practicable after 26 May 2016, OFCOM must review such limitations or provisions with a view to determining whether, if the licence had been granted after 25 May 2011, section 9ZA would have prevented OFCOM from imposing the limitation or provision.
- (3) If OFCOM concludes that section 9ZA would have prevented the imposition of a limitation or provision, it must vary the licence in order to remove the limitation or provision.
- (4) This section does not apply in relation to a provision requiring the use of a specified frequency for the activity authorised by the licence where the licence holder has an opportunity to ask for a different frequency to be specified.]

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Textual Amendments

- F8** Ss. 9ZA, 9ZB inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), [Sch. 2 para. 7](#) (with [Sch. 3 para. 2](#))

[^{F9}9A. Notice to satellite uplinkers

- (1) This section applies where a relevant regulated television service or an on-demand programme service is provided by a person who is deemed to be under the jurisdiction of the United Kingdom for the purpose of the Audiovisual Media Services Directive by reason only of the person providing such a service by means of satellite uplink apparatus situated within the United Kingdom.
- (2) OFCOM may give a notice in writing under this section to a satellite uplinker in relation to a relevant regulated television service if OFCOM are satisfied that the service is provided—
 - (a) in contravention of a licence under Part 1 of the Broadcasting Act 1990 or Part 1 of the Broadcasting Act 1996; or
 - (b) otherwise than pursuant to such a licence.
- (3) OFCOM may give a notice in writing under this section to a satellite uplinker in relation to an on-demand programme service if OFCOM are satisfied that the service is provided [^{F10}—
 - (a)] in contravention of a requirement of Part 4A of the Communications Act 2003 [^{F11}; or
 - (b) otherwise than pursuant to a notification under section 368BA of the Communications Act 2003.]
- (4) Where a notice is given to a satellite uplinker under subsection (2)(a) or (3) [^{F12}(a)] the notice must—
 - (a) name the service;
 - (b) specify the reasons why OFCOM consider that subsection (2)(a) or (3) [^{F12}(a)] is satisfied; and
 - (c) specify—
 - (i) the date by which the satellite uplinker must cease the uplinking of the service; or
 - (ii) a period during which the satellite uplinker must suspend the uplinking of the service.
- (5) Where a notice is given to a satellite uplinker under subsection (2)(b) [^{F13} or (3)(b)] the notice must—
 - (a) name the service; and
 - (b) specify—
 - (i) the date by which the satellite uplinker must cease the uplinking of the service; or
 - (ii) a period during which the satellite uplinker must suspend the uplinking of the service.
- (6) In this section—

“relevant regulated television service” has the same meaning as in section 13 of the Broadcasting Act 1990;

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“on-demand programme service” has the same meaning as in the Communications Act 2003 (see section 368A of that Act).]

Textual Amendments

- F9** S. 9A inserted (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **13(3)**
- F10** Words in s. 9A(3) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **15(2)(a)**
- F11** S. 9A(3)(b) and word inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **15(2)(b)**
- F12** Words in s. 9A(4) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **15(3)**
- F13** Words in s. 9A(5) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **15(4)**

10 Procedure

Schedule 1 (which makes provision about the grant, revocation and variation of wireless telegraphy licences) has effect.

11 Surrender of licence

- (1) Where a wireless telegraphy licence has expired or has been revoked, it is the duty of—
 - (a) the person to whom the licence was granted, and
 - (b) any other person in whose possession or under whose control the licence may be,
 to cause it to be surrendered to OFCOM if required by them to do so.
- (2) Subsection (1) does not apply to a licence that relates solely to receiving apparatus.
- (3) A person commits an offence if—
 - (a) he has a duty under subsection (1) to cause a wireless telegraphy licence to be surrendered to OFCOM; and
 - (b) without reasonable excuse he fails or refuses to do so.
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Charges etc

12 Charges for grant of licence

- (1) A person to whom a wireless telegraphy licence is granted must pay to OFCOM —
 - (a) on the grant of the licence, and
 - (b) if regulations made by OFCOM so provide, subsequently at such times during its term and such times in respect of its variation or revocation as may be prescribed by the regulations,
 the sums described in subsection (2).
- (2) The sums are—

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- (a) such sums as OFCOM may prescribe by regulations, or
 - (b) if regulations made by OFCOM so provide, such sums (whether on the grant of the licence or subsequently) as OFCOM may determine in the particular case.
- (3) Regulations under this section may—
- (a) confer exemptions from provisions of the regulations in particular cases; and
 - (b) provide for sums paid to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as OFCOM think fit.
- (4) On the grant of a licence in respect of which sums will or may subsequently become payable under regulations under this section, OFCOM may require such security to be given, by way of deposit or otherwise, for the payment of those sums as they think fit.
- (5) Regulations under this section do not apply in relation to a licence granted in accordance with regulations under section 14^[F14], but this is subject to subsection (6).]
- ^[F15](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.]

Textual Amendments

F14 Words in s. 12(5) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 38(2)**, 47(1)

F15 S. 12(6)-(9) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 38(3)**, 47(1)

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13 Matters taken into account

- (1) This section applies where OFCOM exercise a power under section 12 to prescribe sums payable in respect of wireless telegraphy licences, other than a power to prescribe sums payable where a licence is varied or revoked at the request or with the consent of the holder of the licence.
- (2) OFCOM may, if they think fit in the light (in particular) of the matters to which they must have regard under section 3, prescribe sums greater than those necessary to recover costs incurred by them in connection with their radio spectrum functions.
- (3) “Prescribe” means prescribe by regulations or determine in accordance with regulations.

14 Bidding for licences

- (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 wireless telegraphy licences must be made in accordance with a procedure that involves the making by the applicant of a bid specifying an amount that he is willing to pay to OFCOM in respect of the licence.
- (2) The regulations may make provision with respect to—
 - (a) the grant of the licences to which they apply; and
 - (b) the terms, provisions and limitations subject to which such licences are granted.
- (3) The regulations may, in particular—
 - (a) require the applicant's bid to specify the amount 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 holding of the licence);
 - (iii) as a combination of the two; or
 - (iv) (at the applicant's choice) in any one of the ways falling within subparagraphs (i) to (iii) that is authorised by the regulations;
 - (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) any one of the ways falling within subparagraphs (i) to (iii) that is authorised by the regulations;
 - (d) specify requirements (for example, technical or financial requirements, requirements relating to fitness to hold the licence and requirements intended to restrict the holding of two or more wireless telegraphy licences by any one person) which must be met by applicants for a licence;
 - (e) require an applicant to pay a deposit to OFCOM;
 - (f) specify circumstances in which 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 procedure provided for in the regulations) in deciding whether, or to whom, to grant a licence;

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- (h) specify the other terms, provisions and limitations subject to which a licence to which the regulations apply is to be granted^[F16](but this is subject to subsection (3A));
- (i) make any provision referred to in section 12(3).

^[F17](3A) If a provision of section 8B, 9(1A) or 9ZA would prevent OFCOM from specifying a term, provision or limitation on the grant of a wireless telegraphy licence, regulations may not specify the term, provision or limitation.

(3B) OFCOM must satisfy themselves, in making regulations specifying criteria to be taken into account in deciding whether, or to whom, to grant a licence, that the criteria are—

- (a) objectively justifiable in relation to the frequencies or uses to which they relate,
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons,
- (c) proportionate to what they are intended to achieve, and
- (d) in relation to what they are intended to achieve, transparent.]

(4) Regulations do not require OFCOM to grant a wireless telegraphy licence 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 wireless telegraphy licence granted in accordance with the regulations must specify—

- (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 licence; or
- (b) the method for determining that sum or those sums;

and that sum or those sums must ^[F18], subject to subsection (5A),] be paid to OFCOM by the person to whom the licence is granted in accordance with the terms of the licence.

^[F19](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.]

(6) In determining the sum or sums payable in respect of a wireless telegraphy licence, regard may be had to bids made for other wireless telegraphy licences and for grants of recognised spectrum access.

(7) The regulations may provide that where a person—

- (a) applies for a licence in accordance with a procedure provided for in the regulations, but
- (b) subsequently refuses the licence applied for,

that person must make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the licence.

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(8) Section 12(4) applies in relation to sums that will or may become payable under regulations under this section after the grant of a wireless telegraphy licence as it applies in relation to sums that will or may become payable under regulations under section 12.

[^{F20}(9) In subsection (5A) “surrendered-spectrum licence” and “predecessor licence” have the meaning given by section 12(8) and (9).]

Textual Amendments

- F16** Words in s. 14(3)(h) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 8(a)** (with Sch. 3 para. 2)
- F17** S. 14(3A)(3B) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 8(b)** (with Sch. 3 para. 2)
- F18** Words in s. 14(5) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 38(5)**, 47(1)
- F19** S. 14(5A) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 38(6)**, 47(1)
- F20** S. 14(9) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 38(7)**, 47(1)

15 Recovery

- (1) This section applies in the case of a sum which is to be paid to OFCOM—
- (a) under any provision of sections 12 to 14;
 - (b) in pursuance of any provision of any regulations under those sections; or
 - (c) because of any terms contained as a result of those sections in a wireless telegraphy licence.
- (2) The sum must be paid to OFCOM as soon as it becomes due in accordance with that provision or those terms and, if it is not paid, it is to be recoverable by them accordingly.

16 Regulations

- (1) In its application to the powers of OFCOM to make regulations under sections 12 to 14, section 122 is subject to the following provisions of this section.
- (2) Subsections (4) to (6) of section 122 do not apply in any case in which it appears to OFCOM that by reason of the urgency of the matter it is inexpedient to publish a notice in accordance with section 122(4)(b).
- (3) Subsections (4) to (6) of section 122 do not apply in the case of any regulations under section 14 modifying previous regulations under section 14 in a case not falling within subsection (2) of this section, if it appears to OFCOM—
- (a) that the modifications would not adversely affect the interests of any person or otherwise put him in a worse position or, as regards someone else, put him at a disadvantage; and
 - (b) in so far as the modifications affect a procedure that has already begun, that no person would have acted differently had the modifications come into force before the procedure began.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

17 Sections 12 to 16: interpretation

References in sections 12 to 16 to the grant of a wireless telegraphy licence include references to the grant of a licence by way of renewal of a previous licence.

CHAPTER 2

GRANTS OF RECOGNISED SPECTRUM ACCESS

Making of grants

18 Grant of recognised spectrum access

- (1) This section applies where—
 - (a) a person is proposing to use or to continue to use a wireless telegraphy station or wireless telegraphy apparatus;
 - (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 electromagnetic energy with a view to the reception of anything at places in the United Kingdom or in UK territorial sea.
- (2) 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.
- (3) 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.
- (4) 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 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.
- (5) A grant of recognised spectrum access to a person is made by giving him a notification containing the grant.
- (6) 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.
- (7) 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 of the Communications Act 2003 (c. 21) (power of OFCOM to set conditions in relation to electronic communications networks and services).
- (8) 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.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

19 Procedure

Schedule 2 (which makes provision about the making, revocation and modification of grants of recognised spectrum access) has effect.

20 Effect of grant of recognised spectrum access

- (1) This section applies to—
- (a) OFCOM's functions under sections 8 and 9 with respect to the granting of wireless telegraphy licences;
 - (b) their functions under section 18 with respect to the making of grants of recognised spectrum access; and
 - (c) any of their other radio spectrum functions 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 in force.
- (2) In carrying out those functions, OFCOM must take into account—
- (a) the existence of any grant of recognised spectrum access that is in force, and
 - (b) the provisions imposing the restrictions and conditions subject to which such a 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.

Charges etc

21 Charges for grant of recognised spectrum access

- (1) A person to whom a grant of recognised spectrum access is made must pay to OFCOM—
- (a) on the making of the grant, and
 - (b) if regulations made by OFCOM so provide, subsequently at such times during its term and such times in respect of its modification or revocation as may be prescribed by the regulations,
- the sums described in subsection (2).
- (2) The sums are—
- (a) such sums as OFCOM may prescribe by regulations, or
 - (b) if regulations made by OFCOM so provide, such sums (whether on the making of the grant or subsequently) as OFCOM may determine in the particular case.
- (3) Regulations under this section may—
- (a) confer exemptions from provisions of the regulations in particular cases; and
 - (b) provide for sums paid to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as OFCOM think fit.
- (4) On the making of a grant of recognised spectrum access in respect of which sums will or may subsequently become payable under regulations under this section, OFCOM may require such security to be given, by way of deposit or otherwise, for the payment of those sums as they think fit.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (5) Regulations under this section do not apply in relation to a grant of recognised spectrum access made in accordance with regulations under section 23.

22 Matters taken into account

- (1) This section applies where OFCOM exercise a power under section 21 to prescribe sums payable in respect of grants of recognised spectrum access, other than a power to prescribe sums payable where a grant is modified or revoked at the request or with the consent of the holder of the grant.
- (2) OFCOM may, if they think fit in the light (in particular) of the matters to which they must have regard under section 3, prescribe sums greater than those necessary to recover costs incurred by them in connection with their radio spectrum functions.
- (3) “Prescribe” means prescribe by regulations or determine in accordance with regulations.

23 Bidding for grants

- (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 that involves the making by the applicant of a bid specifying an amount that he is willing to pay to OFCOM in respect of the grant.
- (2) The regulations may make provision with respect to—
- (a) the grants to which they apply; and
 - (b) 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 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 subparagraphs (i) to (iii) that is authorised by the regulations;
 - (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) any one of the ways falling within subparagraphs (i) to (iii) that is authorised by the regulations;
 - (d) specify requirements (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 an applicant to pay a deposit to OFCOM;

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (f) specify circumstances in which 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 procedure provided for in the regulations) in deciding whether, or to whom, to make a grant of recognised spectrum access;
 - (h) specify the other restrictions and conditions require an applicant to pay a deposit to OFCOM subject to which a grant to which the regulations apply is to be made;
 - (i) make any provision referred to in section 21(3).
- (4) Regulations do not require OFCOM to make a grant of recognised spectrum access 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 the regulations must specify—
- (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 must be paid to OFCOM by the person to whom the grant is made in accordance with the terms 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) The regulations may provide that where a person—
- (a) applies for a grant of recognised spectrum access in accordance with a procedure provided for in the regulations, but
 - (b) subsequently refuses the grant applied for,
- that person must make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the grant.
- (8) Section 21(4) applies in relation to sums that will or may become payable under regulations under this section after the making of a grant of recognised spectrum access as it applies in relation to sums that will or may become payable under regulations under section 21.

24 Recovery

- (1) This section applies in the case of a sum which is to be paid to OFCOM —
- (a) under any provision of sections 21 to 23;
 - (b) in pursuance of any provision of any regulations under those sections; or
 - (c) because of any conditions contained as a result of those sections in a grant of recognised spectrum access.
- (2) The sum must be paid to OFCOM as soon as it becomes due in accordance with that provision or those conditions and, if it is not paid, it is to be recoverable by them accordingly.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

25 Regulations

- (1) In its application to the powers of OFCOM to make regulations under sections 21 to 23, section 122 is subject to the following provisions of this section.
- (2) Subsections (4) to (6) of section 122 do not apply in any case in which it appears to OFCOM that by reason of the urgency of the matter it is inexpedient to publish a notice in accordance with section 122(4)(b).
- (3) Subsections (4) to (6) of section 122 do not apply in the case of any regulations under section 23 modifying previous regulations under section 23 in a case not falling within subsection (2) of this section, if it appears to OFCOM —
 - (a) that the modifications would not adversely affect the interests of any person or otherwise put him in a worse position or, as regards someone else, put him at a disadvantage; and
 - (b) in so far as the modifications affect a procedure that has already begun, that no person would have acted differently had the modifications come into force before the procedure began.

26 Sections 21 to 25: interpretation

References in sections 21 to 25 to the making of a grant of recognised spectrum access include references to the making of a grant by way of renewal of a previous grant.

CHAPTER 3

MANAGEMENT OF RADIO SPECTRUM

General

27 Conversion into and from wireless telegraphy licences

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.

28 Payments by the Crown

- (1) The Secretary of State may, out of money provided by Parliament, make payments to OFCOM of such amounts as he considers appropriate in respect of—
 - (a) the establishment and use, by or on behalf of the Crown, of a wireless telegraphy station;
 - (b) the installation and use, by or on behalf of the Crown, of wireless telegraphy apparatus;
 - (c) any grant of recognised spectrum access made to the Crown.
- (2) The payments made under this section are to be made—
 - (a) at such times, and
 - (b) so far as made in relation to use, in relation to such periods,

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

as the Secretary of State considers appropriate.

29 Limitations on authorised spectrum use

- (1) If they consider it appropriate to impose limitations on the use of particular frequencies for the purpose of securing the efficient use of the electromagnetic spectrum, OFCOM must make an order imposing the limitations.
- (2) An order under this section may do one or both of the following—
 - (a) specify frequencies for the use of which OFCOM will grant or make only a limited number of wireless telegraphy licences and grants of recognised spectrum access; or
 - (b) specify uses for which, on specified frequencies, OFCOM will grant or make only a limited number of wireless telegraphy licences and grants of recognised spectrum access.
- (3) Where OFCOM make an order under this section, it must set out the criteria which OFCOM will apply in determining in accordance with the order—
 - (a) the limit on the number of wireless telegraphy licences and grants of recognised spectrum access to be granted or made for the specified frequencies or uses;
 - (b) the persons to whom licences will be granted or grants of recognised spectrum access made.
- (4) OFCOM must satisfy themselves that any criteria set out as a result of subsection (3) are—
 - (a) objectively justifiable in relation to the frequencies or uses to which they relate;
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (c) proportionate to what they are intended to achieve; and
 - (d) in relation to what they are intended to achieve, transparent.
- (5) OFCOM must exercise—
 - (a) their powers under Chapter 1 of this Part with respect to wireless telegraphy licences, and
 - (b) their powers under Chapter 2 of this Part with respect to grants of recognised spectrum access,
 in accordance with the orders for the time being in force under this section.
- (6) OFCOM must keep under review any order for the time being in force under this section.
- (7) OFCOM must make an order revoking or amending the provisions of an order under this section if, on reviewing it, they consider it necessary to do so for the purpose of securing the efficient use of the electromagnetic spectrum.
- (8) An order under this section may make provision by reference to determinations which—
 - (a) are made from time to time by OFCOM in accordance with the provisions of such an order; and

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (b) are published by them from time to time in such manner as may be provided for in such an order.

30 Spectrum trading

- (1) OFCOM may by regulations authorise the transfer to another person by—
 - (a) the holder of a wireless telegraphy licence, or
 - (b) the holder of a grant of recognised spectrum access,of rights and obligations arising as a result of such a licence or grant.

[^{F21}(1A) Where the European Commission identifies a frequency under article 9b(3) of Directive 2002/21/EC of the European Parliament and of the Council, OFCOM must ensure that regulations under subsection (1) authorise the transfer of a licence or grant relating to that frequency.]

- (2) The transfers that may be so authorised are—
 - (a) transfers of all or any of the rights and obligations under a licence or grant such that the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer;
 - (b) transfers of all or any of those rights and obligations such that the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer; and
 - (c) transfers falling within either of paragraphs (a) and (b) under which the rights and obligations that are acquired by the transferee take effect—
 - (i) if they are rights and obligations under a wireless telegraphy licence, as rights and obligations under a grant of recognised spectrum access; and
 - (ii) if they are rights and obligations under a grant of recognised spectrum access, as rights and obligations under a wireless telegraphy licence.
- (3) Regulations authorising the transfer of rights and obligations under a wireless telegraphy licence or a grant of recognised spectrum access may—
 - (a) authorise a partial transfer—
 - (i) to be made by reference to such factors and apportionments, and
 - (ii) to have effect in relation to such matters and periods,as may be described in, or determined in accordance with, the regulations;
 - (b) by reference to such factors (including the terms and conditions of the licence or grant in question) as may be specified in or determined in accordance with the regulations, restrict the circumstances in which, the extent to which and the manner in which a transfer may be made;
 - (c) require the approval or consent of OFCOM for the making of a transfer;
 - (d) provide for a transfer to be effected by the surrender of a wireless telegraphy licence or grant of recognised spectrum access and the grant or making of a new one in respect of the transfer^{F22}, or in any other way];
 - (e) confer power on OFCOM to direct that a transfer must not be made, or is to be made only after compliance with such conditions as OFCOM may impose in accordance with the regulations;

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (f) authorise OFCOM to require the payment to them of such sums as may be determined by or in accordance with the regulations—
 - (i) in respect of determinations made by OFCOM for the purposes of the regulations, or
 - (ii) in respect of an approval or consent given for those purposes;
 - (g) make provision for the giving of security (whether by the giving of deposits or otherwise) in respect of sums payable in pursuance of any regulations under this section;
 - (h) make provision as to the circumstances in which security given under such regulations is to be returned or may be retained;
 - [^{F23}(i) impose requirements, of a kind specified in the regulations, as to the procedure to be followed for a transfer and, in particular, as to the notification about a transfer falling within subsection (2)(b) that must be given to OFCOM, both in advance of its being made and afterwards;]
 - (j) impose requirements as to the records to be kept in connection with any transfer, and as to the persons to whom such records are to be made available;
 - (k) set out the matters to be taken into account in the making of determinations under regulations under this section.
- [^{F24}(3A) Regulations must make provision as to the notification about a transfer falling within subsection (2)(a) which is to be given to OFCOM and published, both in advance of the transfer being made and afterwards.]
- (4) The transfer of rights and obligations under a wireless telegraphy licence or grant of recognised spectrum access is void except to the extent that it is made—
 - (a) in accordance with regulations under this section; or
 - (b) in accordance with a provision falling within subsection (5).
 - (5) The provision is one which—
 - (a) is contained in a wireless telegraphy licence ^{F25}...
 - (b) allows the holder of the licence to confer the benefit of the licence on another in respect of any station or apparatus to which the licence relates.
 - (6) A transfer is also void if it is made in contravention of a direction given by OFCOM in exercise of a power conferred by regulations under this section.

Textual Amendments

- F21** S. 30(1A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 9(a)** (with Sch. 3 para. 2)
- F22** Words in s. 30(3)(d) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 9(b)** (with Sch. 3 para. 2)
- F23** S. 30(3)(i) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 9(c)** (with Sch. 3 para. 2)
- F24** S. 30(3A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 9(d)** (with Sch. 3 para. 2)
- F25** Words in s. 30(5)(a) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 9(e)** (with Sch. 3 para. 2)

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

Wireless telegraphy register

31 Wireless telegraphy register

- (1) OFCOM may by regulations make provision for the establishment and maintenance of a register of relevant information.
- (2) OFCOM may include relevant information in the register if, and only if, it is relevant information of a description prescribed by regulations under this section.
- (3) Information is relevant information for the purposes of subsection (1) if it relates to—
 - (a) the grant, renewal, transfer, variation or revocation of wireless telegraphy licences; or
 - (b) the making, renewal, transfer, modification or revocation of grants of recognised spectrum access.
- (4) Subject to such conditions (including conditions as to payment) as may be prescribed by regulations under this section, a register established by virtue of subsection (1) is to be open to inspection by the public.

Statistical information

32 Statistical information

- (1) OFCOM may require a person who is using or has established, installed or used a wireless telegraphy station or wireless telegraphy apparatus to provide OFCOM with all such information relating to—
 - (a) the establishment, installation or use of the station or apparatus, and
 - (b) any related matters,as OFCOM may require for statistical purposes.
- (2) Subsection (1) has effect subject to the following provisions of this section.
- (3) OFCOM may not require the provision of information under this section except—
 - (a) by a demand for information that sets out OFCOM's reasons for requiring the information and the statistical purposes for which it is required; and
 - (b) where the making of a demand for that information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.
- (4) A demand for information required under this section must be contained in a notice given to the person from whom the information is required.
- (5) A person required to give information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

[^{F26}32A. Information required for purposes of radio spectrum functions

- (1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their radio spectrum functions.
- (2) The persons falling within this subsection are—

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (a) a person who is using, or has established, installed or used a wireless telegraphy station or wireless telegraphy apparatus, and
 - (b) any other person who appears to OFCOM to have information required by them for the purposes of their radio spectrum functions.
- (3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require to ascertain whether a contravention has occurred of—
- (a) a term, provision or limitation specified in regulations under section 8, or
 - (b) a term, provision or limitation of a wireless telegraphy licence.
- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) The powers in this section are subject to the limitations in section 32B.

Textual Amendments

F26 Ss. 32A-32E inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 10** (with [Sch. 3 para. 2](#))

32B. Restrictions on imposing information requirements

- (1) This section limits the purposes for which, and manner in which, information may be required under section 32A.
- (2) OFCOM are not to require the provision of information for the purpose of ascertaining whether a contravention of a term, provision or limitation has occurred or is occurring, unless—
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;
 - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the term, provision or limitation in question has been complied with;
 - (c) the term, provision or limitation in question is one which OFCOM have reason to suspect has been or is being contravened;
 - (d) the term, provision or limitation in question relates to the effective and efficient use of frequencies; or
 - (e) the term, provision or limitation in question relates to sums payable to OFCOM in respect of a wireless telegraphy licence.
- (3) OFCOM are not to require the provision of information except—
- (a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and
 - (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.
- (4) A demand for information must be contained in a notice served on the person from whom the information is required.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

Textual Amendments

F26 Ss. 32A-32E inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 10** (with [Sch. 3 para. 2](#))

32C. Notification of contravention of information requirements

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 32A, they may give that person a notification under this section.
- (2) A notification under this section is one which—
 - (a) sets out the determination made by OFCOM;
 - (b) specifies the requirement and contravention in respect of which the determination has been made;
 - (c) specifies the period during which the person notified has an opportunity to make representations;
 - (d) specifies information to be provided by the person to OFCOM; and
 - (e) specifies any penalty which OFCOM are minded to impose in accordance with section 32D.
- (3) A notification under this section—
 - (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (4) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if—
 - (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

Textual Amendments

F26 Ss. 32A-32E inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 10** (with [Sch. 3 para. 2](#))

32D. Penalties for contravention of information requirements

- (1) This section applies where a person is given a notification under section 32C which specifies a proposed penalty.
- (2) OFCOM may specify a penalty only if no proceedings for an offence under section 33 have been brought against the person in respect of the contravention.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (3) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (4) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (5) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—
 - (a) the giving of a confirmation decision under section 32E(4)(c) which requires immediate action; or
 - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (6) The amount of a penalty under subsection (5) is to be such amount not exceeding £20,000 per day as OFCOM determine to be—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed
- (7) The amount of any other penalty specified under this section is to be such amount not exceeding £2 million as OFCOM determine to be both—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.

Textual Amendments

F26 Ss. 32A-32E inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), [Sch. 2 para. 10](#) (with [Sch. 3 para. 2](#))

32E. Enforcement of notification under section 32C

- (1) This section applies where—
 - (a) a person has been given a notification under section 32C;
 - (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) OFCOM may—
 - (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements in accordance with the notification under section 32C; or
 - (b) inform the person that they are satisfied with the person’s representations and that no further action will be taken.
- (3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 32C.
- (4) A confirmation decision—
 - (a) must be given to the person without delay;
 - (b) must include reasons for the decision;

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (c) may require immediate action by the person to comply with a requirement notified under section 32C, or may specify a period within which the person must comply with the requirement; and
- (d) may require the person to pay—
 - (i) the penalty specified in the notification under section 32C, or
 - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the requirement or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.
- (5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.
- (6) That duty is enforceable in civil proceedings by OFCOM—
 - (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
 - (c) for any other appropriate remedy or relief.
- (7) A penalty imposed by a confirmation decision—
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period specified by them, is to be recoverable by them accordingly.]

Textual Amendments

F26 Ss. 32A-32E inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 10** (with Sch. 3 para. 2)

33 Failure to provide information etc

- (1) A person commits an offence if he fails to provide information in accordance with a requirement of OFCOM under section 32^{F27} or 32A].
- (2) In proceedings against a person for an offence under subsection (1) it is a defence for the person to show—
 - (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
 - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to
 - ^{F28}(a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.]
- (4) A person commits an offence if—
 - (a) in pursuance of a requirement under section 32^{F29} or 32A], he provides information that is false in any material particular; and
 - (b) at the time he provides it, he knows it to be false or is reckless as to whether or not it is false.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (5) A person who commits an offence under subsection (4) is liable on summary conviction to
- [^{F30}(a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]
- [^{F31}(6) Proceedings for an offence under this section may be brought in respect of a contravention by a person of a requirement imposed under section 32A only if OFCOM have not imposed a financial penalty under sections 32C and 32E in respect of that contravention.]

Textual Amendments

- F27** Words in s. 33(1) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 11(a)** (with Sch. 3 para. 2)
- F28** Words in s. 33(3) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 11(b)** (with Sch. 3 para. 2)
- F29** Words in s. 33(4)(a) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 11(c)** (with Sch. 3 para. 2)
- F30** Words in s. 33(5) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 11(d)** (with Sch. 3 para. 2)
- F31** S. 33(6) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 11(e)** (with Sch. 3 para. 2)

34 Statement of policy

- (1) OFCOM must prepare and publish a statement of their general policy with respect to—
- (a) the exercise of their powers under [^{F32}sections 32 and 32A]; and
 - (b) the uses to which they are proposing to put information obtained under that section.
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make a statement under this section (or revise it), they must publish the statement (or the revised statement) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.
- (4) OFCOM must, in exercising their powers under [^{F33}sections 32 and 32A], have regard to the statement for the time being in force under this section.

Textual Amendments

- F32** Words in s. 34(1)(a) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 12** (with Sch. 3 para. 2)
- F33** Words in s. 34(4) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 12** (with Sch. 3 para. 2)

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

CHAPTER 4

ENFORCEMENT

Unauthorised use etc

35 Unauthorised use etc of wireless telegraphy station or apparatus

- (1) A person commits an offence if he contravenes section 8.
- (2) A person who commits an offence under this section consisting in the establishment or use of a wireless telegraphy station, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) In the application of subsection (2) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (4) A person who commits an offence under this section consisting in the installation or use of receiving apparatus is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A person who commits an offence under this section other than one falling within subsection (2) or (4) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both.
- (6) In the application of subsection (5) to Scotland or Northern Ireland the reference to 51 weeks is to be read as a reference to six months.
- (7) In this section “broadcast” has the same meaning as in Part 5.

36 Keeping available for unauthorised use

- (1) A person who has a wireless telegraphy station or wireless telegraphy apparatus in his possession or under his control commits an offence if—
 - (a) he intends to use it in contravention of section 8; or
 - (b) he knows, or has reasonable cause to believe, that another person intends to use it in contravention of that section.
- (2) A person who commits an offence under this section where the relevant contravention of section 8 would constitute an offence to which section 35(2) applies is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) In the application of subsection (2) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (4) A person who commits an offence under this section in relation to receiving apparatus is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (5) A person who commits an offence under this section other than one falling within subsection (2) or (4) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both.
- (6) In the application of subsection (5) to Scotland or Northern Ireland the reference to 51 weeks is to be read as a reference to six months.

37 Allowing premises to be used for unlawful broadcasting

- (1) A person who is in charge of premises that are used for unlawful broadcasting commits an offence if—
 - (a) he knowingly causes or permits the premises to be so used; or
 - (b) he has reasonable cause to believe that the premises are being so used but fails to take such steps as are reasonable in the circumstances of the case to prevent them from being so used.
- (2) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) In the application of subsection (2) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (4) For the purposes of this section a person is in charge of premises if—
 - (a) he is the owner or occupier of the premises; or
 - (b) he has, or acts or assists in, the management or control of the premises.
- (5) For the purposes of this section premises are used for unlawful broadcasting if they are used—
 - (a) for making an unlawful broadcast; or
 - (b) for sending signals for the operation or control of apparatus used for the purpose of making an unlawful broadcast from another place.
- (6) For the purposes of this section a broadcast is unlawful if—
 - (a) it is made by means of the use of a wireless telegraphy station or wireless telegraphy apparatus in contravention of section 8; or
 - (b) the making of the broadcast contravenes a provision of Part 5.
- (7) In this section—
 - “broadcast” has the same meaning as in Part 5;
 - “premises” includes any place and, in particular, includes—
 - (a) a vehicle, ship or aircraft; and
 - (b) a structure or other object (whether movable or not, and whether on land or not).

38 Facilitating unauthorised broadcasting

- (1) This section applies in the case of a broadcasting station from which unauthorised broadcasts are made.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (2) A person commits an offence if—
- (a) he participates in the management, financing, operation or day-to-day running of the broadcasting station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
 - (b) he supplies, instals, repairs or maintains wireless telegraphy apparatus or any other item knowing, or having reasonable cause to believe—
 - (i) that the apparatus or other item is to be, or is, used for the purpose of facilitating the operation or day-to-day running of the broadcasting station, and
 - (ii) that unauthorised broadcasts are made by the station;
 - (c) he renders any other service to a person knowing, or having reasonable cause to believe—
 - (i) that the rendering of the service to the person will facilitate the operation or day-to-day running of the broadcasting station, and
 - (ii) that unauthorised broadcasts are made by the station;
 - (d) he supplies a film or sound recording knowing, or having reasonable cause to believe, that an unauthorised broadcast of it is to be made by the broadcasting station;
 - (e) he makes a literary, dramatic or musical work knowing, or having reasonable cause to believe, that an unauthorised broadcast of it is to be made by the broadcasting station;
 - (f) he makes an artistic work knowing, or having reasonable cause to believe, that an unauthorised broadcast including that work is to be made by the broadcasting station;
 - (g) he participates in an unauthorised broadcast made by the broadcasting station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
 - (h) he advertises, or invites another to advertise, by means of an unauthorised broadcast made by the broadcasting station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
 - (i) he publishes the times or other details of unauthorised broadcasts made by the broadcasting station, or (otherwise than by publishing such details) publishes an advertisement of matter calculated to promote the station (whether directly or indirectly), knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station.
- (3) For the purposes of this section a person participates in a broadcast only if he is actually present—
- (a) as an announcer;
 - (b) as a performer or one of the performers concerned in an entertainment given; or
 - (c) as the deliverer of a speech.
- (4) The cases in which a person is to be taken for the purposes of this section as advertising by means of a broadcast include any case in which he causes or allows it to be stated, suggested or implied that entertainment included in the broadcast—
- (a) has been supplied by him; or
 - (b) is provided wholly or partly at his expense.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (5) In proceedings for an offence under this section consisting in supplying a thing or rendering a service, it is a defence for the defendant to prove that he was obliged, under or by virtue of any enactment, to supply the thing or render the service.
- (6) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) In the application of subsection (6) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (8) In this section—
 - “broadcast” has the same meaning as in Part 5;
 - “broadcasting station” means a business or other operation (whether or not in the nature of a commercial venture) that is engaged in the making of broadcasts;
 - “unauthorised broadcast” means a broadcast made by means of the use of a wireless telegraphy station or wireless telegraphy apparatus in contravention of section 8.

Procedures for contraventions

39 Contravention of terms, etc

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened—
 - (a) a term, provision or limitation of a wireless telegraphy licence, or
 - (b) a term, provision or limitation of an exemption under section 8(3),
 they may give that person a notification under this section.
- (2) A notification under this section—
 - (a) sets out the determination made by OFCOM;
 - (b) specifies the term, provision or limitation, and the contravention, in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of [^{F34}making representations].

F35(3)

F35(4)

F35(5)

F35(6)

F35(7)

F35(8)

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

Textual Amendments

- F34** Words in s. 39(2)(c) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 13(a)** (with Sch. 3 para. 2)
- F35** S. 39(3)-(8) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 13(b)** (with Sch. 3 para. 2)

^{F36} 40 Repeated contravention

.....

Textual Amendments

- F36** S. 40 omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 14** (with Sch. 3 para. 2)

41 Procedure for prosecutions

- (1) This section applies to proceedings against a person (“the defendant”) for an offence under section 35 consisting in the contravention of—
 - (a) the terms, provisions or limitations of a wireless telegraphy licence; or
 - (b) the terms, provisions or limitations of an exemption under section 8(3).
- (2) Proceedings to which this section applies are not to be brought unless, before they are brought, OFCOM have—
 - (a) given the defendant a notification under section 39 in respect of the contravention to which the proceedings relate; and
 - (b) considered any representations about the matters notified which were made by the defendant within the period allowed under that section.
- (3) Proceedings to which this section applies are not to be brought against a person in respect of a contravention if—
 - (a) it is a contravention to which a notification given to that person under section 39 relates; and
 - (b) that person has, during the period allowed under that section, complied with the notified term, provision or limitation.
- (4) Subsection (2) does not apply where OFCOM have certified that it would be inappropriate to follow the procedure in section 39 because of an immediate risk of—
 - (a) a serious threat to the safety of the public, to public health or to national security; or
 - (b) serious economic or operational problems for persons (other than the defendant) who—
 - (i) use wireless telegraphy stations or wireless telegraphy apparatus; ^{F37}...
 - (ii) are communications providers or make associated facilities available. ^{F38}; or
 - (iii) are other users of the radio spectrum.]
- (5) Where—

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Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (a) proceedings to which this section applies are as a result of subsection (4) brought without a notification having been given to the defendant, and
- (b) the defendant is convicted in those proceedings of the offence under section 35,

the court, in determining how to deal with that person, must have regard, in particular, to the matters specified in subsection (6).

(6) The matters are—

- (a) whether the defendant has ceased to be in contravention of the terms, provisions or limitations in question and (if so) when; and
- (b) any steps taken by the defendant (whether before or after the commencement of the proceedings) for securing compliance with the obligations imposed on him by virtue of those terms, provisions or limitations.

(7) Where—

- (a) OFCOM give a notification under section 39 in respect of a contravention, and
- (b) that notification is given before the end of six months after the day of the contravention,

the time for the bringing of proceedings for a summary offence in respect of that contravention shall be extended until the end of six months from the end of the period allowed, in the case of that notification, for doing the things mentioned in section 39(3).

(8) Subsection (7) has effect notwithstanding anything in—

- (a) section 127 of the Magistrates' Courts Act 1980 (c. 43) (limitation on time for bringing summary proceedings), or
- (b) Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (equivalent provision for Northern Ireland).

Textual Amendments

- F37** Word in s. 41(4)(b) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 15(a)** (with Sch. 3 para. 2)
- F38** S. 41(4)(b)(iii) and word inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 15(b)** (with Sch. 3 para. 2)

42 Special procedure for contraventions by multiplex licence holders

(1) OFCOM may impose a penalty on a person if—

- (a) that person is or has been in contravention in any respect of the terms, provisions or limitations of a general multiplex licence;
- (b) the contravention relates to terms, provisions or limitations falling within section 9(4)(b) or (c);
- (c) OFCOM have notified that person that it appears to them that those terms, provisions or limitations have been contravened in that respect; 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) 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

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Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (3) 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.
- (4) 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.
- (5) A licence is a general multiplex licence, in relation to the time of a contravention, if—
 - (a) it is a wireless telegraphy licence containing terms, provisions or limitations as a result of which the services for the purposes of which the use of the licensed station or apparatus is authorised are confined to, or are allowed to include, one or more multiplex services; and
 - (b) at that time, there is no licence under Part 1 or 2 of the Broadcasting Act 1996 (c. 55) in force in respect of a multiplex service to be broadcast using that station or apparatus.
- (6) “Multiplex service” means—
 - (a) a service for broadcasting for general reception consisting in the packaging together of two or more services that are provided for inclusion together in that service by a combination of the relevant information in digital form; or
 - (b) a service provided with a view to its being a service falling within paragraph (a) but in the case of which only one service is for the time being comprised in digital form in what is provided.

43 Amount of penalty under section 42

- (1) The amount of a penalty imposed under section 42 is to be such amount as OFCOM think fit.
- (2) But the amount of the penalty may not exceed the greater of—
 - (a) £250,000; and
 - (b) 5 per cent. of the relevant amount of gross revenue.
- (3) In subsection (2) “the relevant amount of gross revenue” means the amount specified in section 44.
- (4) The Secretary of State may by order amend this section so as to substitute a different amount for the amount for the time being specified in subsection (2)(a).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

[^{F39}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;

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Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (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.]

Textual Amendments

F39 S. 43A inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. [39\(1\)](#), [47\(1\)](#)

44 Relevant amount of gross revenue

- (1) The relevant amount of gross revenue for the purposes of section 43^[F40] or 43A], in relation to a penalty imposed on a person, is—
- (a) where the last accounting period of that person which falls before the contravention was a period of 12 months, the relevant part of his gross revenue for that period; and
 - (b) in any other case, the amount which, by making any appropriate apportionments or other adjustments of the relevant part of his gross revenue for the accounting period or periods mentioned in subsection (2), is computed to be the amount representing the annual rate for the relevant part of his gross revenue.
- (2) The accounting period or periods referred to in subsection (1) are—
- (a) every accounting period of his to end within the period of 12 months immediately preceding the contravention; and

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Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

- (b) if there is no such accounting period, the accounting period of his which is current at the time of the contravention.
- (3) A reference to the relevant part of a person's gross revenue, in relation to a contravention of the terms, provisions or limitations of a licence, is a reference to so much of his gross revenue as is attributable to the provision of the service to which that licence relates.
- (4) For the purposes of this section—
- (a) the gross revenue of a person for a period, and
- (b) the extent to which a part of a person's gross revenue is attributable to the provision of any service,
- is to be ascertained in accordance with such principles as may be set out in a statement made by OFCOM.
- (5) Such a statement may provide for the amount of a person's gross revenue for an accounting period that is current when the amount falls to be calculated to be taken to be the amount estimated by OFCOM, in accordance with the principles set out in the statement, to be the amount that will be his gross revenue for that period.
- (6) OFCOM may revise a statement made under subsection (4) from time to time.
- (7) A statement made or revised under this section may set out different principles for different cases.
- (8) Before making or revising a statement under this section, OFCOM must consult the Secretary of State and the Treasury.
- (9) OFCOM must—
- (a) publish the statement made under subsection (4) and every revision of it; and
- (b) send a copy of the statement and of every such revision to the Secretary of State;
- and the Secretary of State must lay copies of the statement and of every such revision before each House of Parliament.
- (10) Sections 32 and 33 are to apply for the purpose of ascertaining the amount of a person's gross revenue for any period for the purposes of section 43^{F41} or 43A] and this section as they apply for the purpose of obtaining information for statistical purposes about matters relating to the establishment, installation or use by that person of a wireless telegraphy station or wireless telegraphy apparatus.
- (11) In this section—
- “accounting period”, in relation to a person, means a period in respect of which accounts of the undertaking carried on by him are prepared or, if one such period is comprised in another, whichever of those periods is or is closest to a 12 month period;
- “gross revenue”, in relation to a person, means the gross revenue of an undertaking carried on by that person.

Textual Amendments

F40 Words in s. 44(1) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 39(2)**, 47(1)

F41 Words in s. 44(10) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 39(2)**, 47(1)

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

CHAPTER 5

MISCELLANEOUS

Regulations about wireless telegraphy

45 Regulations

- (1) OFCOM may make regulations prescribing the things that are to be done, or not done, in connection with the use of a wireless telegraphy station or wireless telegraphy apparatus.
- (2) Regulations under subsection (1) may, in particular, require the use of a wireless telegraphy station or wireless telegraphy apparatus to cease on the demand of such persons as may be prescribed by or under the regulations.
- (3) OFCOM may make regulations imposing on a person—
 - (a) to whom a wireless telegraphy licence relating to a wireless telegraphy station or wireless telegraphy apparatus is granted, or
 - (b) who is in possession or control of such a station or such apparatus,the obligations mentioned in subsection (4).
- (4) The obligations are—
 - (a) obligations as to permitting and facilitating the inspection of the station or apparatus;
 - (b) obligations as to the condition in which the station or apparatus is to be kept;
 - (c) in the case of a station or apparatus for the establishment, installation or use of which a wireless telegraphy licence is necessary, obligations as to the production of the licence, or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations.
- (5) OFCOM may make regulations requiring the holder of a wireless telegraphy licence in respect of which sums are or may become due after the grant of the licence, or after its renewal, to keep and produce such accounts and records as may be specified in the regulations.
- (6) OFCOM may make regulations requiring the holder of a wireless telegraphy licence authorising the establishment or use of a wireless telegraphy station to exhibit at the station such notices as may be specified in the regulations.
- (7) Regulations under this section have effect subject to regulations under section 14.
- (8) Nothing in regulations under this section requires a person to concede any form of right of entry into a private dwelling-house for the purpose of permitting or facilitating the inspection of receiving apparatus.
- (9) The approval of the Secretary of State is required for the making by OFCOM of regulations under this section.
- (10) A statutory instrument containing regulations made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Status: Point in time view as at 26/05/2011.

Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

46 Offences

- (1) A person commits an offence if—
 - (a) he contravenes regulations made under section 45; or
 - (b) he causes or permits a wireless telegraphy station or wireless telegraphy apparatus to be used in contravention of regulations made under that section.
- (2) A person who commits an offence under this section consisting in a contravention, in relation to receiving apparatus, of regulations made under section 45 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person who commits an offence under this section other than one falling within subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Misuse of wireless telegraphy

47 Misleading messages

- (1) A person commits an offence if, by means of wireless telegraphy, he sends or attempts to send a message to which this section applies.
- (2) This section applies to a message which, to the person's knowledge—
 - (a) is false or misleading; and
 - (b) is likely to prejudice the efficiency of a safety of life service or to endanger the safety of a person or of a ship, aircraft or vehicle.
- (3) This section applies in particular to a message which, to the person's knowledge, falsely suggests that a ship or aircraft—
 - (a) is in distress or in need of assistance; or
 - (b) is not in distress or not in need of assistance.
- (4) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) In the application of subsection (4) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.

48 Interception and disclosure of messages

- (1) A person commits an offence if, otherwise than under the authority of a designated person—
 - (a) he uses wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of a message (whether sent by means of wireless telegraphy or not) of which neither he nor a person on whose behalf he is acting is an intended recipient, or
 - (b) he discloses information as to the contents, sender or addressee of such a message.

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- (2) A person commits an offence under this section consisting in the disclosure of information only if the information disclosed by him is information that would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person.
- (3) A person does not commit an offence under this section consisting in the disclosure of information if he discloses the information in the course of legal proceedings or for the purpose of a report of legal proceedings.
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) “Designated person” means—
 - (a) the Secretary of State;
 - (b) the Commissioners for Her Majesty's Revenue and Customs; or
 - (c) any other person designated for the purposes of this section by regulations made by the Secretary of State.

49 Interception authorities

- (1) The conduct in relation to which a designated person may give an interception authority is not to include conduct falling within subsection (2), except where he believes that the conduct is necessary on grounds falling within subsection (5).
- (2) Conduct falls within this subsection if it is—
 - (a) conduct that, if engaged in without lawful authority, constitutes an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000 (c. 23);
 - (b) conduct that, if engaged in without lawful authority, is actionable under section 1(3) of that Act;
 - (c) conduct that is capable of being authorised by an authorisation or notice granted under Chapter 2 of Part 1 of that Act (communications data); or
 - (d) conduct that is capable of being authorised by an authorisation granted under Part 2 of that Act (surveillance etc).
- (3) A designated person may not exercise his power to give an interception authority except where he believes—
 - (a) that the giving of his authority is necessary on grounds falling within subsection (4) or (5); and
 - (b) that the conduct authorised by him is proportionate to what is sought to be achieved by that conduct.
- (4) An interception authority is necessary on grounds falling within this subsection if it is necessary—
 - (a) in the interests of national security;
 - (b) for the purpose of preventing or detecting crime or of preventing disorder;
 - (c) in the interests of the economic well-being of the United Kingdom;
 - (d) in the interests of public safety;
 - (e) for the purpose of protecting public health;
 - (f) for the purpose of assessing or collecting a tax, duty, levy or other imposition, contribution or charge payable to a government department; or

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- (g) for any purpose (not falling within paragraphs (a) to (f)) that is specified for the purposes of this subsection by regulations made by the Secretary of State.
- (5) An interception authority is necessary on grounds falling within this subsection if it is not necessary on grounds falling within subsection (4)(a) or (c) to (g) but is necessary for purposes connected with—
- (a) the grant of wireless telegraphy licences;
 - (b) the prevention or detection of anything that constitutes interference with wireless telegraphy; or
 - (c) the enforcement of—
 - (i) any provision of this Part (other than Chapter 2 and sections 27 to 31) or Part 3, or
 - (ii) any enactment not falling within sub-paragraph (i) that relates to interference with wireless telegraphy.
- (6) The matters to be taken into account in considering whether the requirements of subsection (3) are satisfied in the case of the giving of an interception authority include whether what it is thought necessary to achieve by the authorised conduct could reasonably be achieved by other means.
- (7) An interception authority must be in writing and under the hand of—
- (a) the Secretary of State;
 - (b) one of the Commissioners for Her Majesty's Revenue and Customs; or
 - (c) a person not falling within paragraph (a) or (b) who is designated for the purposes of this subsection by regulations made by the Secretary of State.
- (8) An interception authority may be general or specific and may be given—
- (a) to such person or persons, or description of persons,
 - (b) for such period, and
 - (c) subject to such restrictions and limitations,
- as the designated person thinks fit.
- (9) No regulations may be made under subsection (4)(g) unless a draft of them has first been laid before Parliament and approved by a resolution of each House.
- (10) For the purposes of this section the question whether a person's conduct is capable of being authorised under Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23) or under Part 2 of that Act is to be determined without reference—
- (a) to whether the person is someone upon whom a power or duty is or may be conferred or imposed by or under that Chapter or that Part; or
 - (b) to whether there are grounds for believing that the requirements for the grant of an authorisation or the giving of a notice under that Chapter or that Part are satisfied.
- (11) References in this section to an interception authority are references to an authority for the purposes of section 48 given otherwise than by way of the issue or renewal of a warrant, authorisation or notice under Part 1 or 2 of the Regulation of Investigatory Powers Act 2000.
- (12) In this section—
- “crime” has the meaning given by section 81(2)(a) of the Regulation of Investigatory Powers Act 2000 (c. 23);
 - “designated person” has the same meaning as in section 48.

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Changes to legislation: There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2. (See end of Document for details)

Miscellaneous

50 Apparatus on foreign-registered ships etc

- (1) The Secretary of State may make regulations for regulating the use, on board a foreign-registered ship or aircraft while it is within the limits of the United Kingdom and UK territorial sea, of wireless telegraphy apparatus on board the ship or aircraft.
- (2) The regulations may provide—
 - (a) for the punishment of persons contravening the regulations by a fine;
 - (b) for the forfeiture of any wireless telegraphy apparatus in respect of which an offence under the regulations is committed.
- (3) The maximum fine for each offence under the regulations is—
 - (a) an amount not exceeding level 5 on the standard scale; or
 - (b) a lesser amount.
- (4) The regulations may make different provision for ships or aircraft registered in different countries.
- (5) Except as provided by this section or in consequence of an Order in Council under section 119(3), nothing in sections 8 to 11, 35 to 38, 45 to 49, 105 and 119 operates so as to impose any prohibition or restriction on persons using wireless telegraphy apparatus on board a foreign-registered ship or aircraft.
- (6) A foreign-registered ship or aircraft is one that—
 - (a) is not registered in the United Kingdom; and
 - (b) is registered in a country other than the United Kingdom, the Isle of Man or any of the Channel Islands.

51 Apparatus in vehicles

- (1) This section applies to the power of the Secretary of State under section 7(1) of the Vehicle Excise and Registration Act 1994 (c. 22) to specify—
 - (a) the declaration to be made, and
 - (b) the particulars to be furnished,by a person applying for a vehicle licence (within the meaning of that Act).
- (2) The power of the Secretary of State includes power to require that the declaration and particulars extend to any matters relevant for the enforcement of section 8 of this Act in respect of any wireless telegraphy apparatus installed in the vehicle.
- (3) Accordingly, the Secretary of State is not required to issue a vehicle licence under the Vehicle Excise and Registration Act 1994 where the applicant fails to comply with a requirement imposed because of subsection (2).
- (4) A person commits an offence if in providing information that he is required to provide because of subsection (2)—
 - (a) he makes a statement that he knows to be false in a material particular; or
 - (b) he recklessly makes a statement that is false in a material particular.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (6) Where subsection (4) applies, it applies instead of section 45 of the Vehicle Excise and Registration Act 1994 (c. 22) (false or misleading declarations and information).

52 Wireless personnel

- (1) The Secretary of State may—
- (a) hold examinations to determine the competence of the persons examined to fill positions in connection with the operation of wireless telegraphy stations or wireless telegraphy apparatus;
 - (b) issue certificates of competence to persons successful in such examinations.
- (2) The certificates of competence are to be of such types as the Secretary of State may from time to time determine.
- (3) The Secretary of State may issue written authorities to such persons as he thinks fit authorising them to fill such positions in connection with the operation of wireless telegraphy stations or wireless telegraphy apparatus as may be specified in the authority.
- (4) The positions that may be so specified are positions for the holding of which the possession of an authority under subsection (3) is a necessity or a qualification under—
- (a) a wireless telegraphy licence granted under this Act, or
 - (b) a licence granted under a corresponding law of a country or territory under the sovereignty of Her Majesty.
- (5) If it appears to the Secretary of State that there are sufficient grounds to do so, he may at any time suspend an authority under subsection (3) with a view to its revocation.
- (6) Schedule 3 has effect where an authority is suspended under subsection (5).
- (7) The Secretary of State may charge such fees, if any, as he may determine—
- (a) to persons applying to take part in an examination under this section;
 - (b) to applicants for, or for copies of, a certificate or authority issued under this section.

53 Surrender of authority

- (1) Where an authority under section 52(3) has ceased to be in force or has been suspended, it is the duty of—
- (a) the person to whom the authority was issued, and
 - (b) any other person in whose possession or under whose control the authority may be,
- to cause it to be surrendered to the Secretary of State if required by the Secretary of State to do so.
- (2) A person commits an offence if—
- (a) he has a duty under subsection (1) to cause an authority under section 52(3) to be surrendered to the Secretary of State, and
 - (b) without reasonable excuse he fails or refuses to do so.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Status:

Point in time view as at 26/05/2011.

Changes to legislation:

There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, Part 2.