
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision enabling the Office of Communications (“OFCOM”) to re-organise the broadcasting of digital terrestrial television services, in order to facilitate the introduction of new technologies. To achieve this, the Order modifies Part 1 of the Broadcasting Act 1996 (“the Act”) and also makes provision having effect in place of provisions in that Part, in relation to licences to provide television multiplex services (see below) and digital television programme services. It is made under section 243(1) and (3) of the Communications Act 2003 (“the 2003 Act”) and applies across the United Kingdom, the Channel Islands and the Isle of Man.

Digital terrestrial television (i.e. services received via a conventional aerial) is broadcast by means of six “television multiplex services”; the Order is concerned only with three of those. In summary, the Order will require OFCOM:

- (a) to conduct a competition amongst certain broadcasters (“relevant public service broadcasters”) for the right to provide digital television programme services on one such multiplex (“Multiplex B”);
- (b) to reserve capacity on Multiplex B for the broadcasting of digital television programme services provided by the relevant public service broadcasters which successfully compete for such capacity (whilst allowing the operator of Multiplex B to retain capacity for a BBC service); and
- (c) to reserve capacity on two other multiplexes (Multiplex 2 and Multiplex A) to deal with the consequences of displacing existing services from Multiplex B.

The “relevant public service broadcasters” are the holders of a licence to provide a Channel 3 service; the Channel Four Television Corporation (“C4C”); the holder of a licence to provide Channel 5; the Welsh Authority (except in the Channel Islands and the Isle of Man); and the public teletext provider: see section 243(7) of the 2003 Act.

Article 2 defines key terms used in the Order.

Article 3 concerns the competition which OFCOM must hold for digital capacity to be reserved on Multiplex B. Article 3(2) and (3) require OFCOM to issue a notice inviting relevant public service broadcasters to apply for digital capacity, and specify certain details which the notice must provide. Article 3(4) specifies the details which a broadcaster must include in an application, and article 3(8) provides indicative criteria against which OFCOM are to assess whether digital capacity should be reserved in favour of the applicant. Article 3(5) relates specifically to Channel 3, which is a nationwide service organised on the basis of a number of regional licensees and one national licensee, and provides that a Channel 3 licence holder (whether national or local) must be supported by at least 13 holders of regional Channel 3 licences in order to bid for digital capacity.

Article 3(9) to (15) make supplementary provision. In particular, although the first notice under this Order should be issued within six months of it coming into force (see article 3(2)), article 3(12) and (13) provide for a delay in the event that it appears that not enough capacity is or will be available on Multiplex B.

Article 4 requires OFCOM to vary the Multiplex B licence in order to reserve capacity for the successful broadcaster or broadcasters, subject to certain preconditions and limits. OFCOM must not reserve more than two such tranches at any time when Multiplex B can accommodate no more than three high definition services (article 4(2)(a)). OFCOM can later reserve a third tranche so long as they are satisfied that Multiplex B can then carry at least four such television services (article 4(2)

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(b), (6)(b) and (7)). This structure ensures that there will always be capacity allowing for at least one other service to be chosen by the Multiplex B operator in addition to those services occupying capacity awarded by OFCOM. Further, no capacity at all is to be reserved unless and until OFCOM have awarded at least two tranches of capacity (article 4(6)(a) and (7)).

Article 4(3) requires the capacity reserved for a relevant public service broadcaster to be used for the carriage of the services which were indicated in that broadcaster's application under article 3, but (subject to that obligation) OFCOM has a discretion to permit the broadcaster to use the reserved capacity to carry other services. Capacity can remain reserved only for so long as the broadcaster remains a relevant public service broadcaster and (in the case of Channel 3) may be withdrawn if they cease to provide a service on behalf of 13 regional Channel 3 licensees: article 4(3)(a) and (4).

Article 4(8) permits either a broadcaster who has been awarded capacity or the Multiplex B licence holder (or both) to seek a determination from OFCOM on the question of the amount of digital capacity which is sufficient for the broadcasting of two, or as the case may be, three high definition services.

Articles 5 to 7 concern the licensing of services other than qualifying services for broadcasting on Multiplex B. Article 5 creates a new type of licence, namely a public service digital programme licence, to be held by a relevant public service broadcaster which successfully bids for capacity to provide a new service that is not a simulcast of an existing (licensed) one. Articles 6 and 7 modify sections 18 and 19 of the Act accordingly.

Article 8 concerns variations to the Multiplex 2 licence. These will be triggered only if OFCOM have made the changes to Multiplex B required by Article 4. Article 8(3) specifies the amount of digital capacity that is to be reserved for certain public service broadcasters. Article 8(5) enables an appropriate broadcaster (as defined in paragraph (6)) or the holder of the Multiplex 2 licence to seek a determination from OFCOM as to the amount of capacity which is sufficient for the broadcasting of specified services.

Articles 9 and 10 concern variations to the Multiplex A licence in respect of Channel 5 and Welsh Authority services respectively. These will be triggered only if OFCOM have made the changes to Multiplex 2 required by Article 8(3)(c) and (d) (capacity for Channel 5 and Welsh Authority) and will bring about a corresponding reduction of capacity on Multiplex A for those broadcasters. The parties can seek a determination from OFCOM as to the amount of capacity which is sufficient for the broadcasting of the specified services.

Article 11 makes supplementary modifications in section 12 of the Act.

Article 12 provides that a multiplex licence holder may use capacity that is not reserved as it sees fit, subject to the terms of the licence.

Article 13 provides that regard is to be had to the amount of capacity actually being used by the multiplex operator for broadcasting high or standard definition television services on unreserved capacity when assessing how much reserved capacity is "sufficient" for the purposes of the Order.

A Regulatory Impact Assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House of Parliament. Copies are available from Moira Goatley at the Department for Culture, Media and Sport, 2 to 4 Cockspur Street, London SW1Y 5DH. (Tel: 0207 211 6927 or e-mail: moira.goatley@culture.gsi.gov.uk).