

# COMMUNICATIONS ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Networks, Services and the Radio Spectrum**

##### *Chapter 2: Spectrum Use*

349. The existing law governing access to and use of radio spectrum is contained in the Wireless Telegraphy Acts 1949, 1967 and 1998, the Marine, etc., Broadcasting (Offences) Act 1967 and Part VI of the Telecommunications Act 1984. Under section 1(1) of the 1949 Act, it is an offence for any person to establish or use any station for wireless telegraphy or to install or use any apparatus for wireless telegraphy, otherwise than under and in accordance with a licence granted by the Secretary of State. Since radio spectrum is a finite resource, users of spectrum will continue to be licensed as at present, although the licensing and enforcement functions under the above legislation will be transferred to OFCOM (in accordance with section 2 of and Schedule 1 to the Act – see the notes for those provisions above).

*\*The expressions wireless telegraphy, apparatus for wireless telegraphy and station for wireless telegraphy are defined in section 19 of the Wireless Telegraphy Act 1949. Wireless telegraphy means the emitting or receiving of electromagnetic energy of a frequency not exceeding three million megacycles a second, which is equivalent to 3000 Giga-Hertz in modern terminology, (essentially radio signals) for the purposes of conveying messages, sounds or visual images or for the determination of position or distance. Stations and apparatus for wireless telegraphy are stations and apparatus for the emitting or receiving of radio signals.*

350. Chapter 2 of Part 2 of the Act sets out new functions of OFCOM in relation to radio spectrum (which are in addition to the existing wireless telegraphy functions transferred to OFCOM under section 2 and Schedule 1). It introduces a new scheme of recognised spectrum access and continues the market-based approach to spectrum management introduced by the Wireless Telegraphy Act 1998 by allowing trading as a means of gaining access to spectrum. Additionally, Chapter 2 of Part 2 and Schedule 17 contain a large number of amendments to the existing law on wireless telegraphy, mainly for the purpose of implementing the new Directives.

##### *Section 152: General functions of OFCOM in relation to radio spectrum*

351. This section sets out general functions of OFCOM in relation to radio spectrum. These functions are:

- to give advice in relation to the use of radio spectrum and to provide other services and maintain records with respect to radio spectrum use within and outside of the United Kingdom, as OFCOM consider appropriate for the purposes of spectrum management.
- OFCOM may also be required by the Secretary of State to give other advice and to provide other services or to maintain other records for the purpose of securing

United Kingdom compliance with any of its international obligations. The services, records and advice may be in respect of spectrum use outside the United Kingdom.

352. For the purpose of the carrying out of these functions, OFCOM may carry out or commission research and development work on use of radio spectrum, including future developments and any connected matters. OFCOM may, with the consent of the Treasury, also make a grant to any person in order to encourage efficient spectrum-management or use.
353. Where OFCOM are required to give advice or provide another service, they may charge for doing so (if they are not required to do so, any charge would be under section 25).

### ***Section 153: United Kingdom Plan for Frequency Authorisation***

354. This section places OFCOM under a duty to publish a plan (to be known as “the United Kingdom Plan for Frequency Authorisation”) setting out the frequencies allocated for particular radio purposes in the UK that are available for assignment, and the purposes for which they have been allocated. This implements the requirement in Article 5(3) of the Authorisation Directive that there should be a national frequency plan.

### ***Section 154: Duties of OFCOM when carrying out spectrum functions***

355. This section sets out the duties of OFCOM when carrying out their functions under the enactments relating to radio spectrum management. OFCOM must have regard in particular to (i) the amount of spectrum available for use; (ii) the present and future demand for spectrum; and (iii) the desirability of promoting efficient management and use of the radio spectrum, the economic and other benefits of radio spectrum use, the development of innovative services and competition in the provision of electronic communications services. In regard to functions other than setting fees for licences or grants of recognised spectrum access under section 2 of the Wireless Telegraphy Act 1998, OFCOM may disregard such of these matters as do not appear relevant to the case in question. OFCOM must resolve any conflict between their duties under this section in the manner they think best in the circumstances. However, OFCOM must give priority to their duties under sections 3 to 6 in the event of any conflict between those duties and their duties under this section. This implements Article 9(1) of the Framework Directive.

### ***Section 155: Advisory service in relation to interference***

356. OFCOM may advise and help people complaining of interference with wireless telegraphy - in other words where the fulfilment of the purposes of the wireless telegraphy is prejudiced by any emission or reflection of electro-magnetic energy.

### ***Section 156: Directions with respect to the radio spectrum***

357. This section gives the Secretary of State a power, by order, to give general or specific directions to OFCOM about the carrying out of their spectrum functions. They may include a direction (i) to reserve certain frequencies for different classes of use, for example broadcasting, mobile telecommunications, private business systems, air traffic control or radio astronomy, or within a class, for example for the provision of additional digital television services or radio broadcasting multiplexes; or (ii) to exercise their powers under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 and under sections 1, 3 and 3A of the Wireless Telegraphy Act 1998 in accordance with the provisions of the direction. This power is in addition to the power conferred on the Secretary of State by section 5 to give directions for limited purposes in accordance with which OFCOM must exercise their functions.

\*The proviso to section 1(1) of the Wireless Telegraphy Act 1949 allows classes or descriptions of wireless telegraphy stations or apparatus to be exempted from licensing requirements by regulations made by the Secretary of State (such

regulations will be made by OFCOM when the relevant provisions of the Act come into force). Section 1 of the Wireless Telegraphy Act 1998 (as amended by section 161) allows the Secretary of State to make regulations setting the fees to be paid on the issue and renewal of wireless telegraphy licences and grants of recognised spectrum access, and is subject to section 2 of that Act (which, as substituted by paragraph 147 of Schedule 17 to the Act, allows the Secretary of State to charge licence fees above the cost of exercising wireless telegraphy functions (“administrative incentive pricing”). Section 3 of the 1998 Act allows the Secretary of State to make regulations providing for wireless telegraphy licences to be awarded by means of spectrum auctions. Finally, section 3A of the 1998 Act is introduced by section 161. The regulations provided for in sections 1 to 3A of the 1998 Act will be made by OFCOM when the relevant provisions of the Act come into force.

### ***Section 157: Procedure for directions under s.156***

358. An order containing a direction under section 156 must state its purpose, unless the direction requires OFCOM to reserve certain frequencies for specified uses or requires OFCOM to exercise their powers under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 or under section 1, 3 or 3A of the Wireless Telegraphy Act 1998 in a certain way. Before making an order containing a direction under section 156, unless urgency makes it inexpedient to do so, the Secretary of State must consult OFCOM and such other persons as she thinks fit. A draft of the order must be laid before Parliament and approved by each House, except where the Secretary of State considers the urgency of the case requires the order to be made straight away. An order containing a direction given by the Secretary of State in an urgent case ceases to have effect at the end of 40 days (excluding Parliamentary recesses) unless it is approved by a resolution of each House of Parliament.

### ***Section 158: Special duty in relation to television multiplexes***

359. If OFCOM reserve frequencies for the broadcasting of television programmes, they are under a duty, so far as practicable, to secure that sufficient multiplex capacity is available for qualifying services on television multiplexes licensed under the Broadcasting Act 1996. This is in accordance with condition 1 of Part B of the Annex to the Authorisation Directive.

*\*qualifying service* has the same meaning as is given in section 2 of the Broadcasting Act 1996.

### ***Section 159: Grant of recognised spectrum access***

360. Sections 159 to 162 introduce a new scheme of grants of “recognised spectrum access”. Grants of recognised spectrum access (“RSA”) will be available, in circumstances to be specified by OFCOM in regulations, to persons who transmit radio signals for reception in the United Kingdom, but who are not, for whatever reason, required to hold a licence under the Wireless Telegraphy Acts. Possible examples include certain satellite services, radio astronomy and Crown users of spectrum.
361. Section 159 sets out the procedures that apply to the making by OFCOM of grants of recognised spectrum access. Subsection (3) allows OFCOM to specify, amongst other things, the frequencies used, reception coverage and strength and type of signal that are the subject of the grant. Subsection (5) allows OFCOM to make a grant of RSA subject to such restrictions and conditions as they think fit, for example as to strength and type of signal, times of use or sharing of frequencies.
362. Schedule 5 makes additional detailed provision about the procedure for the grant, modification and revocation of grants of RSA. OFCOM are to prescribe procedures for applications for a grant of RSA including requirements that must be fulfilled before, and restrictions and conditions subject to which, a grant will be made. Where an

applicant fails to provide all the information reasonably required by OFCOM, their application may be refused. Any proposed refusal of an application must be notified to the applicant, stating the reasons and specifying the period (at least a month) within which the applicant may make representations about the proposed refusal. Similarly, if OFCOM propose to revoke or modify a grant or the restrictions or conditions to which it is subject, they must notify the person to whom the grant was made and give him the opportunity to make representations or, if applicable, to remedy a contravention of the restrictions or conditions of the grant.

***Section 160: Effect of grant of recognised spectrum access***

363. This section places OFCOM under a duty to take into account any grants of RSA to the same extent as if a licence under section 1 of the Wireless Telegraphy Act 1949 had been granted when (i) granting wireless telegraphy licences; (ii) making grants of RSA; and (iii) carrying out any of their other functions under the enactments relating to radio spectrum management where it is appropriate to have regard to whether wireless telegraphy licences are in force or to their terms.

***Section 161: Charges in respect of grants of recognised spectrum access***

364. This section amends section 1 of the Wireless Telegraphy Act 1998 to allow OFCOM to set the fees to be paid on the making of a grant of RSA. This section also inserts a new section 3A into the 1998 Act that makes provision for OFCOM to determine applications for the grant of RSA by means of an auction and for the procedures to be followed in such cases.

***Section 162: Conversion into and from wireless telegraphy licences***

365. Upon application, OFCOM may (in accordance with regulations made by them) convert a wireless telegraphy licence into a grant of RSA and vice versa.

***Section 163: Payments for use of radio spectrum by the Crown***

366. This section allows the Secretary of State to make payments (out of money provided by Parliament) for the operation by the Crown of stations and apparatus for wireless telegraphy or in respect of any grant of RSA made to the Crown. The Wireless Telegraphy Act 1949 does not bind the Crown, which is therefore exempt from the obligation to obtain a licence for its use of spectrum. However, in order that public sector users should have incentives to use spectrum efficiently, a commitment was given during the passage of the Wireless Telegraphy Act 1998 that the Crown would pay for access to spectrum on a comparable basis to the private sector.

***Section 164: Limitations on authorised spectrum use***

367. Where OFCOM consider it appropriate to limit the number of wireless telegraphy licences or grants of RSA on certain frequencies, or for certain uses, for the purpose of securing efficient spectrum use, they must make an order imposing the limitations. The purpose of this duty is to ensure fairness between potential users. The order must set out the criteria OFCOM will apply in limiting the number of licences and grants and deciding to whom to issue licences or grants of RSA. The criteria must be objective, non-discriminatory, proportionate and transparent. OFCOM must keep the order under review. This section implements Article 7 of the Authorisation Directive.

***Section 165: Terms etc. of wireless telegraphy licences***

368. This section adds three new subsections to section 1 of the Wireless Telegraphy Act 1949. Subsection (2A) provides that any terms, provisions and limitations of a licence granted under that Act may include (i) provisions relating to the strength or type of signal, times of use, and frequency sharing, and (ii) prohibitions on or obligations requiring the transmission or broadcasting of particular content by the licence holder.

Subsection (2B) enables licences to be granted in relation to stations or apparatus described by reference to specified factors or in relation to a particular station or apparatus. Subsection (2C) provides that a licence must not duplicate conditions already imposed by general conditions under this Act: this new subsection implements Article 6(4) of the Authorisation Directive.

### ***Section 166: Exemption from need for wireless telegraphy licence***

369. This section amends the Wireless Telegraphy Act 1949 to require OFCOM to exempt certain stations or apparatus from the requirement to be licensed under that Act where their use would not cause undue interference (as redefined in section 183). This implements Article 5(1) of the Authorisation Directive.

### ***Section 167: Bidding for wireless telegraphy licences***

370. This section makes some procedural amendments to section 3 of the Wireless Telegraphy Act 1998, which governs the conduct of spectrum auctions for wireless telegraphy licences. The principal changes are to combine the separate regulations and notices which at present govern spectrum auctions, to introduce greater flexibility on how bids may be expressed and to add a new provision allowing OFCOM to require payments to be made by a person who successfully bids for a wireless telegraphy licence but subsequently refuses to take the licence applied for.
371. [Paragraph 21](#) of Schedule 18 (transitional provisions) provides that any procedures set out in a notice issued by the Secretary of State under regulations made under section 3 of the Wireless Telegraphy Act 1998 before the commencement of this section shall have effect as if prescribed by OFCOM by regulations under that provision.

### ***Section 168: Spectrum trading***

372. This section gives OFCOM a power to make regulations authorising the holder of a wireless telegraphy licence or the holder of a grant of RSA to transfer the rights and obligations under their licence or grant of RSA to another person. This will enable the development of a secondary market in licences and grants of RSA where this is permitted by OFCOM.
373. *Subsections (1) and (2)* provide that regulations authorising spectrum trading may allow some or all of the rights and obligations attached to a wireless telegraphy licence or grants of RSA to be transferred to another person, or for such rights and obligations to be exercised concurrently by the transferee and the transferor. Sharing of rights could occur, for example, if it were intended that the licence or grants of RSA would revert after a period of time to the original holder, who meanwhile would remain responsible for ensuring compliance with the terms and conditions. *Subsection (2)* will thus allow secondary spectrum trading to take place in different ways and is designed to allow maximum flexibility.
374. *Subsection (3)* sets out the range of provisions that may be included in regulations authorising spectrum trading. For example, under *subsection 3(c) and (e)* regulations may require the approval of OFCOM before a trade can be made, and may make trades subject to compliance with conditions imposed by OFCOM. Under *subsection (3)(i)*, the regulations may require that trades be notified to OFCOM both before and after the trade takes place (and notification before the trade will be made a requirement because Article 9(4) of the Framework Directive requires it).
375. *Subsections (4) and (5)* provide that a transfer of rights and obligations under a wireless telegraphy licence or grant of RSA will be void unless it is made in accordance with either: (i) regulations authorising spectrum trading made under this section; or (ii) the provisions of an existing wireless telegraphy licence which allows the holder to confer the benefit of the licence on another.



376. This section implements Article 9(3) and (4) of the Framework Directive and condition 5 of Part B of the Annex to the Authorisation Directive.

***Section 169: Variation and revocation of wireless telegraphy licences***

377. This section substitutes a new section 1E of the Wireless Telegraphy Act 1949. The principal changes are an increase from 28 days to one month as the standard period of notice that OFCOM must give, new provisions about shorter notice in cases of serious and repeated breaches and urgency, and removal of the need for notice when the variation or revocation is at the request of, or with the consent of, the licence-holder. The first two of those changes implement paragraphs 2, 5, 6 and 10 of Article 10 and Article 14(1) of the Authorisation Directive (see also the notes on section 172 below).
378. In addition, paragraph 8 of Schedule 17 amends section 1D of the Wireless Telegraphy Act 1949 to provide that any application for a grant of a wireless telegraphy licence shall be determined in accordance with procedures prescribed in regulations made by OFCOM. Any decision on such an application must, in most cases, be published by OFCOM within six weeks. Paragraph 20 of Schedule 18 (transitional provisions) provides that any procedures set out in a notice under section 1D of the Wireless Telegraphy Act 1949 prior to the commencement of paragraph 8 of Schedule 17 shall be treated as if they are regulations made under the amended section 1D.

***Section 170: Wireless telegraphy register***

379. OFCOM may, by regulations, set up a public register of information about the holders of wireless telegraphy licences and persons to whom grants of RSA have been made. This may also include details about the licences and frequencies assigned.

***Section 171: Information requirements in relation to wireless telegraphy licences***

380. This section amends the Wireless Telegraphy Act 1949 by inserting new sections 13A and 13B. Section 13A allows OFCOM to require, by issuing a notice, any user of a wireless telegraphy station or apparatus to provide information relating to their use of the station or apparatus and any related matters to OFCOM for statistical purposes: the limitation on the purpose for which information may be required implements Article 11(1)(e) of the Authorisation Directive. Such a request must be proportionate (which implements the requirement in Article 11(1), and OFCOM must explain why they are demanding that information and the statistical purposes for which the information will be used (which implements Article 11(2)). A person who fails to provide such information is guilty of an offence, although it is a defence to show that it was not reasonably practicable for him to comply within the period allowed, but that he took all reasonable steps to comply after that period had expired. It is also an offence for a person to provide information to OFCOM under this section that is materially false if he knows, or is reckless as to whether, it is materially false.
381. Section 13B imposes a requirement on OFCOM to publish a statement of their policy on the use of their powers under section 13A and the statistical purposes for which they will use any information gathered and to have regard to such statement for the time being in force when exercising the powers under section 13A.

***Section 172: Contraventions of conditions for use of wireless telegraphy***

382. Where OFCOM have reasonable grounds to believe that a wireless telegraphy licensee is or has been in breach of any term, provision, or limitation of that licence or any person is or has been in breach of any term, provision or limitation of an exemption under the proviso to section 1(1) of the Wireless Telegraphy Act 1949, they may notify that person accordingly, and allow him a specified period of time in which to make representations to OFCOM and to take steps to comply with the notified term, provision or limitation. The specified period of time must usually be one month, except, for example, in cases

of repeated contraventions. This section implements Article 10(2) of the Authorisation Directive (see also the notes on sections 169 and 174).

***Section 173: Meaning of “repeated contravention” in s. 172***

383. This section defines a “repeated contravention” for the purposes of section 172. This section implements Article 10(2) and (5) of the Authorisation Directive.

***Section 174: Procedure for prosecutions of wireless telegraphy offences***

384. Proceedings for an offence under section 1 of the Wireless Telegraphy Act 1949 cannot be brought unless OFCOM have first notified the potential defendant under section 172 and considered any representations made by him (this implements Article 10(2) and (3) of the Authorisation Directive - see also the notes on section 172 above). However, OFCOM do not have to follow section 172 procedures in urgent cases, i.e. where there is a threat to public safety or health, or to national security, or where a person other than the defendant would suffer serious economic or operational problems (this implements Article 10(6) of the Authorisation Directive).

***Section 175: Special procedure for contraventions by multiplex licence holders***

385. This section gives OFCOM a power to impose fines for breach of terms, provisions or limitations falling within new section 1(2A)(b) or (c) of the Wireless Telegraphy Act 1949 (terms, provisions and limitations about service content) inserted by section 165. OFCOM may impose a fine under this section where they have notified the general multiplex licensee of their belief that he is in breach of the licence condition in question, provided that criminal proceedings have not already been commenced under the Wireless Telegraphy Act 1949 against that licensee in respect of that alleged breach. Once a fine has been imposed by OFCOM, *subsection (4)* provides that no criminal proceedings may be brought under the 1949 Act for that breach.

\*a *general multiplex licence* is defined in *subsection (5)* as a wireless telegraphy licence issued for the purposes of a multiplex service, when no licence under the Broadcasting Act 1996 is held in respect of that multiplex service.

\**multiplex service* is defined in *subsection (6)* as a service broadcast for general reception which provides, or is capable of providing, two or more digital services.

386. OFCOM must notify a general multiplex licensee on whom they decide to impose a fine, giving the reasons for their decision and allowing a reasonable period within which the fine must be paid.

***Section 176: Amount of penalty under s. 175***

387. This section provides that the maximum penalty that OFCOM may impose for a contravention of section 175 will be the greater of £250,000 and 5% of the relevant amount of gross revenue (which term is defined in section 177). *Subsection (3)* provides for the Secretary of State to amend by order the amount of £250,000. When determining the amount of a penalty to be imposed, OFCOM must have regard to their guidelines for fixing penalties published in accordance with section 392.

***Section 177: “Relevant amount of gross revenue” for the purposes of s. 176***

388. The relevant amount of gross revenue for the purpose of section 176 is to be calculated in accordance with a statement of principles made by OFCOM. Before making or revising a statement under this section, OFCOM must consult the Treasury and the Secretary of State. OFCOM must publish the statement or revision and send a copy to the Secretary of State, who must lay it before each House of Parliament.

***Section 178: Proceedings for an offence relating to apparatus use***

389. This section amends sections 11 and 12 of the Wireless Telegraphy Act 1949 in order to bring the mechanism for appeals against decisions of OFCOM about apparatus which causes or may cause undue interference (which are currently taken by the Secretary of State) into line with the new provisions for appeals in Chapter 3 of Part 2 of this Act.
390. The current arrangements for appeal to a tribunal established under section 9 of the 1949 Act, which is repealed by Schedule 19, have very rarely, if ever, been used.

***Section 179: Modification of penalties for certain wireless telegraphy offences***

391. *Subsections (1) and (2)* amend section 14 of the Wireless Telegraphy Act 1949. They alter the penalties and mode of trial for offences under sections 1 and 1A of the 1949 Act committed after the commencement of this section consisting of unlicensed transmission other than for broadcasting, or possession of apparatus for such transmission: these offences become triable summarily only, and the maximum penalties are now six months imprisonment and/or a fine not exceeding level 5 on the standard scale (currently £5,000). *Subsection (3)* amends section 79(1) of the Telecommunications Act 1984 so that, where authorised by warrant, apparatus and other property suspected of being used in connection with an offence under section 1A of the 1949 Act consisting of possessing apparatus for unauthorised transmission (whether broadcasting or not) may be seized and detained.

\*As mentioned above, section 1(1) of the 1949 Act makes it an offence for any person to establish or use any station for wireless telegraphy or to install or use any apparatus for wireless telegraphy, otherwise than under and in accordance with a licence granted by the Secretary of State. Section 1A makes it an offence to possess or have control over any equipment with intent to use it in contravention of section 1 or knowing, or having reasonable cause to believe, that another person will so use it. The mode of trial and penalties for broadcasting offences are not affected by the 1949 Act.

***Section 180: Fixed penalties for certain wireless telegraphy offences***

392. This section gives effect to Schedule 6 to the Act, which introduces a fixed penalty regime for summary offences under the Wireless Telegraphy Act 1949.
393. **Schedule 6** allows OFCOM to send a “fixed penalty notice” to any person they believe has committed any summary offence under the 1949 Act. This notice must give particulars about the alleged offence, and will offer the alleged offender the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty within the specified period, which must be at least one month. The amount of the penalty may be prescribed in relation to that offence by regulations made by the Secretary of State, but must not be more than 25 per cent of the maximum fine on summary conviction). No proceedings may be brought for the alleged offence during the specified period, unless the alleged offender asks to be tried in accordance with the provisions of the notice. If the penalty is paid within the period specified in the notice, no further proceedings for that offence can be brought against the notified person.

***Section 181: Power of arrest***

394. This section applies the summary arrest powers contained in Schedule 1A to the Police and Criminal Evidence Act 1984 (which is being inserted by the Police Reform Act 2002) to offences under section 14(1) of the Wireless Telegraphy Act 1949. Section 14(1) provides that certain offences under the 1949 Act are triable either summarily or on indictment (“triable either way”). This section also amends the equivalent provision in the Police and Criminal Evidence (Northern Ireland) Order 1989.



***Section 182: Forfeiture etc. of restricted apparatus***

395. This section gives effect to Schedule 7, which replaces sections 80 and 81 of the Telecommunications Act 1984.
396. **Schedule 7** sets out the procedures which apply to the seizure and forfeiture of apparatus the custody or control of which is restricted under an order made under section 7 of the Wireless Telegraphy Act 1967. OFCOM are to notify each owner of such apparatus about its seizure and the grounds for that seizure. The principal change from the previous regime will be that restricted apparatus that has been seized will be deemed to be forfeited unless any person claiming that the apparatus is not liable to forfeiture gives notice of his claim in writing to OFCOM within one month of the date of the notice of seizure. In such cases OFCOM may take the matter to court. They must decide as soon as reasonably practicable after receipt of the claim either to do so or to return the apparatus to its owners.

\*Section 7 of the Wireless Telegraphy Act 1967 provides for the Secretary of State to make orders restricting certain actions in relation to specified apparatus for the purpose of preventing or reducing the risk of interference. Restricted apparatus may be seized either under warrant under section 15 of the Wireless Telegraphy Act 1949 or in accordance with a power in section 79(3) of the Telecommunications Act 1984 to seize any apparatus or thing used in connection with offences specified in section 79(1) of that Act.

***Section 183: Modification of definition of “undue interference”***

397. This section modifies the definition of “undue interference” in section 19(5) of the Wireless Telegraphy Act 1949 (i) in implementation of condition 3 of Part B of the Annex to the Authorisation Directive, which refers to “harmful interference” as defined in Article 2(2)(b) of that Directive, and also (ii) in implementation of Article 7(2) of Directive 1999/5/EC on radio equipment and telecommunications terminal equipment, which refers to “harmful interference” as defined (in the same terms) in Article 2(i) of that Directive. The new definition provides that interference with wireless telegraphy will not be regarded as “undue interference” unless it is also harmful. “Harmful” interference means that the interference creates dangers or risks of dangers in relation to any radio service used for navigation or for any other purpose connected with safety, or that it degrades, obstructs or repeatedly interrupts lawful radio transmissions.

***Section 184: Modification of definition of “wireless telegraphy”***

398. This section gives the Secretary of State the power (exercisable by order, subject to the affirmative resolution procedure in both Houses of Parliament) to modify the definition of “wireless telegraphy” in section 19(1) of the Wireless Telegraphy Act 1949 so as to vary the upper frequency limit (currently 3,000 Giga-Hertz) of the electromagnetic spectrum to which the Wireless Telegraphy Acts apply. Although current technology does not permit the use for radiocommunications of frequencies anywhere near that limit, as technology progresses it may be necessary to raise the ceiling.