



# Wireless Telegraphy Act 2006

## 2006 CHAPTER 36

### PART 2

#### REGULATION OF RADIO SPECTRUM

### 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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.

## **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.
- (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);

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- (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;
  - (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 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.

## **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.