

## SCHEDULES

### SCHEDULE 2

Regulation 2(2)

#### Amendments to Wireless Telegraphy Act 2006

1. Amend the Wireless Telegraphy Act 2006(1) as follows.
2. In section 2 (United Kingdom Plan for Frequency Authorisation), after subsection (2) insert—
  - “(3) Before publishing the plan, OFCOM must ensure that the criteria applied to determine the allocation of frequencies for particular purposes 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.”
3. In section 6 (procedure for directions), after subsection (3) insert—
  - “(3A) Before making an order under section 5, the Secretary of State must take due account of the desirability of not favouring—
    - (a) one form of electronic communications network, electronic communications service or associated facility, or
    - (b) one means of providing or making available such a network, service or facility, over another.”
4. In section 8 (licences and exemptions)—
  - (a) after subsection (3) insert—
    - “(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, 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.”,

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(b) in subsection (4) for “the condition in subsection (5) is” substitute “the conditions in subsection (5) are”, and

(c) for subsection (5) substitute—

“(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.”

5. After section 8 insert—

**“Review of long licences**

**8A.**—(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).

(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.

**Restriction on grant of exclusive licence**

**8B.**—(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).

#### **Consultation before grant of exclusive licence**

- 8C.**—(1) This section applies where—
- (a) OFCOM propose to grant an exclusive licence, and
  - (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.”
- 6.** In section 9 (terms, provisions and limitations) —
- (a) after subsection (1) insert—

“(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.”, and
  - (b) in subsection (8) after “subject to” insert “section 9ZA and to”.
- 7.** After section 9 insert—

#### **“Restrictions on imposition of limitations etc under section 9**

- 9ZA.**—(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;

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- (b) the protection of public health against electromagnetic fields;
- (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.

#### **Review of pre-26 May 2011 limitations etc.**

**9ZB.**—(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.”

#### **8. In section 14 (bidding for licences)—**

- (a) in subsection (3)(h), after “granted” insert “(but this is subject to subsection (3A))”, and
- (b) after subsection (3) insert—

“(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.”

**9.** In section 30 (spectrum trading)—

(a) after subsection (1) insert—

“(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.”,

(b) at the end of subsection (3)(d) insert “, or in any other way”,

(c) for subsection (3)(i) substitute—

“(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;”,

(d) after subsection (3) insert—

“(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.”, and

(e) in subsection (5)(a) omit the words from “granted before” to the end.

**10.** After section 32 insert—

**“Information required for purposes of radio spectrum functions**

**32A.**—(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—

- (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.

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

(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.

### **Restrictions on imposing information requirements**

**32B.**—(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.

### **Notification of contravention of information requirements**

**32C.**—(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.

### **Penalties for contravention of information requirements**

**32D.**—(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.

(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.

### **Enforcement of notification under section 32C**

**32E.**—(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.

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

(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;
- (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.”

**11.** In section 33 (offence of failing to provide information)—

- (a) in subsection (1) after “32” insert “or 32A”,
- (b) in subsection (3) for “a fine not exceeding level 3 on the standard scale” substitute—
  - “(a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.”
- (c) in subsection (4)(a) after “32” insert “or 32A”,
- (d) in subsection (5) for “a fine not exceeding level 5 on the standard scale” substitute—
  - “(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.”, and
- (e) after subsection (5) insert—



“(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.”

**12.** In section 34 (statement of policy), in subsections (1)(a) and (4) for “section 32” substitute “sections 32 and 32A”.

**13.** In section 39 (contravention of terms, etc)—

- (a) in subsection (2)(c) for “doing the things specified in subsection (3)” substitute “making representations”, and
- (b) omit subsections (3) to (8)(2).

**14.** Omit section 40.

**15.** In section 41(4)(b) (procedure for prosecutions)—

- (a) after sub-paragraph (i) omit “or”, and
- (b) after sub-paragraph (ii) insert—
  - “; or
  - (iii) are other users of the radio spectrum.”

**16.** In Schedule 1 (procedure for wireless telegraphy licences)—

- (a) at the end of paragraph 1 insert—
  - “(3) The procedures must be—
    - (a) open (except where sub-paragraph (4) applies);
    - (b) objective;
    - (c) transparent;
    - (d) not such as to discriminate unduly against particular persons or against a particular description of persons; and
    - (e) proportionate to what they are intended to achieve.
  - (4) The requirement for a procedure to be open does not apply if—
    - (a) the procedure relates to licences for frequencies for the broadcasting of television and radio programmes, and
    - (b) OFCOM think that, in order to ensure the fulfilment of a general interest objective (within the meaning given by section 8B(3)), the procedure should not be open.”,
- (b) after paragraph 6 insert—
  - “**6A.** OFCOM may not revoke or vary a wireless telegraphy licence unless the proposed revocation or variation is objectively justifiable.”,
- (c) in paragraph 7(1)(b) for “to do the things specified in sub-paragraph (2)” substitute “to make representations about the proposal”,
- (d) omit paragraph 7(2),
- (e) for paragraph 7(3) substitute—
  - “(3) The period for making representations—

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(2) Subsection (8) was inserted by the Audiovisual Media Services Regulations 2009 (S.I. 2009/2979), regulation 13(4).

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- (a) if the proposal is the result of a contravention of a term, provision or limitation of a licence, is such period as OFCOM may specify; and
  - (b) in any other case, must be the period of one month beginning with the day after the one on which the notification was given (but this is subject to sub-paragraphs (4) to (6)).”,
- (f) in paragraph 7(6)(a) omit “or a case of serious and repeated contravention”,
- (g) omit paragraph 7(8), (9) and (13),
- (h) in paragraph 7(10)—
- (i) at the end of paragraph (a) omit “and”, and
  - (ii) at the end of paragraph (b) insert—  
“; and
- (c) in the case of a variation of a wireless telegraphy licence extending the duration of the licence, publish the notification and the reasons for the decision.”,
- (i) after paragraph 7(11)(a) omit “and” and insert—  
“(aa) must give reasons for the decision; and”, and
- (j) at the end of paragraph 7(12), insert “(but OFCOM must, where a proposal is made by or with the consent of the holder of the licence to vary a wireless telegraphy licence in order to extend the duration of the licence, publish the notification of their decision and the reasons for it)”.