



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 2

#### SPECTRUM USE

##### *General functions relating to spectrum use*

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

- (1) It shall be a function of OFCOM—
  - (a) to give such advice in relation to the use of the electro-magnetic spectrum for wireless telegraphy,
  - (b) to provide such other services, and
  - (c) to maintain such records,as they consider appropriate for the purpose of facilitating or managing the use of that spectrum for wireless telegraphy.
- (2) It shall be a function of OFCOM, in relation to the use of the electro-magnetic spectrum for wireless telegraphy—
  - (a) to give such further advice,
  - (b) to provide such other services, and
  - (c) to maintain such other records,as the Secretary of State may, for the purpose of securing compliance with the international obligations of the United Kingdom, require them to provide.
- (3) The advice, the other services and the records that OFCOM may give, provide or maintain under this section include advice, other services and records with respect to the use of the electro-magnetic spectrum at places outside the United Kingdom.

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- (4) The powers of OFCOM to carry out research, or to arrange for others to carry out research, are to be exercisable, in particular, for ascertaining, for the purpose of carrying out their functions under this section, information about—
- (a) the demands for use of the electro-magnetic spectrum for wireless telegraphy in the United Kingdom;
  - (b) the effects, in the United Kingdom, of any such use of that spectrum;
  - (c) likely future developments in relation to those matters; and
  - (d) any other connected matters that OFCOM think relevant.
- (5) OFCOM may make a grant to any person if, in their opinion, the making of the grant is likely to promote—
- (a) the efficient use in the United Kingdom of the electro-magnetic spectrum for wireless telegraphy; or
  - (b) the efficient management of that use.
- (6) A grant—
- (a) may be made to a person holding a wireless telegraphy licence or a grant of recognised spectrum access under section 159 or to any other person; and
  - (b) is to be made on such terms and conditions as OFCOM consider appropriate; and those terms and conditions may include terms requiring the repayment of the grant in specified circumstances.
- (7) The consent of the Treasury is to be required—
- (a) for the making of a grant under subsection (5); and
  - (b) for the terms and conditions on which such a grant is made.
- (8) Where OFCOM are required to give advice or provide another service to a person under this section, they are to be entitled to make the giving of the advice or the provision of the other service conditional on the payment to them of such sums—
- (a) as they may determine in advance; or
  - (b) as may be agreed between them and that person.
- (9) In this section references to providing a service to a person include references to a service consisting in—
- (a) the entry of that person’s particulars in a register or other record kept by OFCOM for the purpose of carrying out their functions under this section; or
  - (b) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

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

- (1) It shall be the duty of OFCOM, from time to time as they think fit, to publish a document (to be known as “the United Kingdom Plan for Frequency Authorisation”).
- (2) The plan must set out—
- (a) the frequencies that, in relation to the United Kingdom, have been allocated for particular purposes for wireless telegraphy and are available for assignment; and
  - (b) the purposes for which the different frequencies have been allocated.

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

- (1) It shall be the duty of OFCOM, in carrying out their functions under the enactments relating to the management of the radio spectrum, to have regard, in particular, to—
  - (a) the extent to which the electro-magnetic spectrum is available for use, or further use, for wireless telegraphy;
  - (b) the demand for use of that spectrum for wireless telegraphy; and
  - (c) the demand that is likely to arise in future for the use of that spectrum for wireless telegraphy.
- (2) It shall also be their duty, in carrying out their functions under those enactments to have regard, in particular, to the desirability of promoting—
  - (a) the efficient management and use of the part of the electro-magnetic spectrum available for wireless telegraphy;
  - (b) the economic and other benefits that may arise from the use of wireless telegraphy;
  - (c) the development of innovative services; and
  - (d) competition in the provision of electronic communications services.
- (3) In the application of this section to the functions of OFCOM under the enactments relating to the management of the radio spectrum other than section 2 of the Wireless Telegraphy Act 1998 (c. 6) (exercise of power to prescribe wireless telegraphy licence fees), OFCOM may disregard such of the matters mentioned in the preceding subsections as appear to them—
  - (a) to be matters to which they are not required to have regard apart from this section; and
  - (b) to have no application to the case in question.
- (4) Where it appears to OFCOM that any of their duties under this section conflict with one or more of their duties under sections 3 to 6, priority must be given to their duties under those sections.
- (5) Where it appears to OFCOM that any of their duties under this section conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

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

- (1) It shall be a function of OFCOM to provide a service consisting in the giving of advice and assistance to persons complaining of interference with wireless telegraphy.
- (2) In this section “interference”, in relation to wireless telegraphy, has the same meaning as in the Wireless Telegraphy Act 1949 (c. 54).

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

- (1) The Secretary of State may by order give general or specific directions to OFCOM about the carrying out by OFCOM of their functions under the enactments relating to the management of the radio spectrum.
- (2) The directions that may be given under this section include a direction requiring OFCOM to secure that such frequencies of the electro-magnetic spectrum as may be specified in the direction are kept available or become available—

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- (a) for such uses or descriptions of uses, or
  - (b) for such users or descriptions of users,
- as may be so specified.
- (3) The directions that may be given under this section include a direction requiring OFCOM to exercise their powers under the provisions mentioned in subsection (4)—
- (a) in such cases,
  - (b) in such manner,
  - (c) subject to such restrictions and constraints, and
  - (d) with a view to achieving such purposes,
- as may be specified in the direction or as may be determined by the Secretary of State in accordance with the order.
- (4) Those provisions are—
- (a) the proviso to section 1 of the Wireless Telegraphy Act 1949 (exemptions from requirement of wireless telegraphy licence); and
  - (b) sections 1 to 3A of the Wireless Telegraphy Act 1998 (c. 6) (payments in respect of wireless telegraphy licences and grants of recognised spectrum access).
- (5) This section is not to be construed as restricting the power of the Secretary of State under section 5, without the making of an order, to give a direction for any of the purposes for the time being specified in subsection (3) of that section.

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

- (1) An order containing a direction under section 156, if it is not one falling within subsection (2) or (3) of that section, must state the purpose for which the direction is given.
- (2) Before making an order containing a direction under section 156, the Secretary of State must consult both—
  - (a) OFCOM; and
  - (b) such other persons as he thinks fit.
- (3) Subsection (2) does not apply where the Secretary of State considers that the urgency of the case makes it inexpedient to carry out the consultation before making the order.
- (4) Subject to subsection (5), no order is to be made containing provision authorised by section 156 unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (5) Subsection (4) does not apply where the Secretary of State considers either—
  - (a) before or in the course of the consultation required by subsection (2); or
  - (b) after the consultation and before or after a draft of the order has been laid before Parliament,
 that the urgency of the case is or has become such that he should make the order straight away.
- (6) Where under subsection (5) the Secretary of State makes an order containing a direction under section 156 without a draft of the order having been approved, the order shall cease to have effect at the end of the period of forty days beginning with the

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day on which it was made unless, before the end of that period, it has been approved by a resolution of each House of Parliament.

- (7) For the purposes of subsection (6)—
- (a) the order’s ceasing to have effect is without prejudice to anything previously done, or to the making of a new order; and
  - (b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

#### *Reservation of spectrum for multiplex use*

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

- (1) This section applies where OFCOM, in exercise of their functions under the enactments relating to the management of the radio spectrum, have reserved frequencies for the broadcasting of television programmes.
- (2) It shall be the duty of OFCOM, in the carrying out of their functions under those enactments, to exercise their powers so as to secure, so far as practicable, that the requirement of subsection (3) is satisfied.
- (3) That requirement is that sufficient capacity is made available on the reserved frequencies for ensuring, in the case of every licensed television multiplex service, that the qualifying services are broadcast by means of that multiplex service.
- (4) In subsection (3) “licensed television multiplex service” means a television multiplex service the provision of which is authorised by a licence under Part 1 of the 1996 Act.
- (5) In this section “qualifying service” and “television multiplex service” each has the same meaning as in Part 3 of this Act.

#### *Recognised spectrum access*

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

- (1) This section applies where—
  - (a) a person is proposing to use or to continue to use a station or apparatus for wireless telegraphy;
  - (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 electro-magnetic energy with a view to the reception of anything at places in the United Kingdom or in the territorial waters adjacent to the United Kingdom;and 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.
- (2) 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.

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- (3) 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.
- (4) A grant of recognised spectrum access to a person is made by giving him a notification containing the grant.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Schedule 5 (which makes provision about the grant, revocation and modification of recognised spectrum access) shall have effect.
- (9) Section 403 applies to the power of OFCOM to make regulations under subsection (1).
- (10) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act.

## **160 Effect of grant of recognised spectrum access**

- (1) This section applies to the following functions of OFCOM—
  - (a) their functions under section 1 of the Wireless Telegraphy Act 1949 (c. 54) (licensing of the use of the radio spectrum) with respect to the granting of wireless telegraphy licences;
  - (b) their functions under section 159 of this Act with respect to the making of grants of recognised spectrum access; and
  - (c) any of their other functions under the enactments relating to the management of the radio spectrum 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 for the time being in force.
- (2) In carrying out the functions to which this section applies it shall be the duty of OFCOM to take into account—
  - (a) the existence of any grant of recognised spectrum access that is for the time being in force, and
  - (b) the provisions imposing the restrictions and conditions subject to which the 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.

## 161 Charges in respect of grants of recognised spectrum access

- (1) The Wireless Telegraphy Act 1998 (c. 6) (which makes provision about the sums that may be charged in respect of the issue and renewal of wireless telegraphy licences etc.) shall be amended as follows.
- (2) In section 1 (charges for wireless telegraphy licences)—
  - (a) in subsection (1), after “this Act” there shall be inserted—
    - “(a) references to a grant of recognised spectrum access are references to a grant made under section 159 of the Communications Act 2003 (recognised spectrum access); and
    - (b)”;
  - (b) in subsection (2), for the words from “or renewal”, where they first occur, to “is issued” there shall be substituted “of a wireless telegraphy licence or the making of a grant of recognised spectrum access and, where regulations under this section so provide, subsequently at such times during the term of the licence or grant and such times in respect of its variation, modification or revocation, as may be prescribed by the regulations, there shall be paid to OFCOM by the person to whom the licence is issued or the grant made”; and
  - (c) in subsection (4), for the words from “or renewal”, where they first occur, to “the licence” there shall be substituted “of a licence or the making of a grant of recognised spectrum access, OFCOM may, on the issue of the licence or the making of the grant,”.
- (3) After section 3 of that Act there shall be inserted the following section—

### “3A Bidding for grants of recognised spectrum access

- (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 which involves the making by the applicant of a bid specifying an amount which he is willing to pay to OFCOM in respect of the grant.
- (2) Regulations under this section may make provision with respect to the grants to which they apply and 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 which 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 the preceding sub-paragraphs that is authorised by the regulations;

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- (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) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
  - (d) specify requirements (such as, 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 any such applicant to pay a deposit to OFCOM;
  - (f) specify circumstances in which such 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 prescribed procedure) 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; and
  - (i) make any provision referred to in section 1(3).
- (4) Regulations under this section are not to be construed as binding OFCOM to make a grant 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 regulations under this section shall specify either—
- (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 shall be paid to OFCOM by the person to whom the grant is made in accordance with the conditions 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) Regulations under this section may provide that where a person—
- (a) makes an application for a grant of recognised spectrum access in accordance with a procedure provided for by such regulations, but
  - (b) subsequently refuses the grant applied for,
- that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the grant.
- (8) Subsection (4) of section 1 is to apply in relation to sums that will or may become payable under regulations under this section subsequently to the making of a grant of recognised spectrum access as it applies to sums that will or may become payable under regulations under that section.”



## **162 Conversion into and from wireless telegraphy licences**

- (1) 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.
- (2) Section 403 applies to the power of OFCOM to make regulations under this section.

### *Crown use of the radio spectrum*

## **163 Payments for use of radio spectrum 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 station for wireless telegraphy;
  - (b) the installation and use by or on behalf of the Crown, of apparatus for wireless telegraphy;
  - (c) any grant of recognised spectrum access made to the Crown.
- (2) The payments made under this section shall be made at such times and, so far as made in relation to use, in relation to such periods as the Secretary of State considers appropriate.
- (3) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act.

### *Limitations and exemptions applied to spectrum use*

## **164 Limitations on authorised spectrum use**

- (1) If they consider it appropriate, for the purpose of securing the efficient use of the electro-magnetic spectrum, to impose limitations on the use of particular frequencies, 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 spectrum access made.

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- (4) OFCOM must satisfy themselves that any criteria set out by virtue 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) It shall be the duty of OFCOM to exercise the following powers in accordance with the orders for the time being in force under this section—
- (a) their powers under the Wireless Telegraphy Act 1949 and the Wireless Telegraphy Act 1998 (c. 6) with respect to wireless telegraphy licences; and
  - (b) their powers under the Wireless Telegraphy Act 1998 and this Chapter with respect to grants of recognised spectrum access.
- (6) OFCOM must keep under review any order for the time being in force under this section.
- (7) It shall be the duty of OFCOM to 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 electro-magnetic 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
  - (b) are published by them from time to time in such manner as may be provided for in such an order.
- (9) Section 403 applies to the power of OFCOM to make an order under this section.

## **165 Terms etc. of wireless telegraphy licences**

In section 1 of the Wireless Telegraphy Act 1949 (c. 54), after subsection (2) (terms, provisions and limitations of the licence) there shall be inserted—

“(2A) Those 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; and
- (c) terms or provisions requiring the transmission or broadcasting of particular matters by that person.

(2B) A licence under this section may be granted either—

- (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.

- (2C) The terms, provisions and limitations of a licence granted under this section to a person must not duplicate obligations already imposed on him by general conditions set under section 45 of the Communications Act 2003.”

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

After section 1 of the Wireless Telegraphy Act 1949 there shall be inserted—

### **“1AA Exemption from need for wireless telegraphy licence**

- (1) If OFCOM are satisfied that the condition in subsection (2) is satisfied as respects the use of stations or apparatus of any particular description, they shall make regulations under section 1 of this Act exempting the establishment, installation and use of any station or apparatus of that description from the prohibition in that section.
- (2) That condition is that the use of stations or apparatus of that description is not likely to involve any undue interference with wireless telegraphy.”

### *Award and transfer of licences*

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

- (1) Section 3 of the Wireless Telegraphy Act 1998 (c. 6) (bidding for wireless telegraphy licences) shall be amended as follows.
- (2) The following shall cease to have effect—
- (a) in subsection (1), the words “or determined by him under” and paragraph (a) (requirement to set out procedure for bidding in a notice issued under regulations); and
  - (b) subsection (2) (matters to be included in regulations).
- (3) In subsection (3) (provision that may be contained in regulations)—
- (a) for paragraph (a) there shall be substituted—
    - “(a) require the applicant’s bid to specify the amount he is willing to pay;
    - (aa) 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 the preceding sub-paragraphs that is authorised by the regulations;
  - (ab) require that amount to be expressed in terms of—
    - (i) the making of a single payment;

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- (ii) the making of periodic payments;
  - (iii) a combination of the two; or
  - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;”
  - (b) in paragraph (f), for “any licence” there shall be substituted “a licence to which the regulations apply”; and
  - (c) the word “and” shall be inserted at the end of paragraph (f) and paragraph (h) shall cease to have effect.
- (4) For subsection (4) (notice not to create binding obligation to grant licence) there shall be substituted—
- “(4) Regulations under this section are not to be construed as binding OFCOM to grant a 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) For subsection (5) (licence to specify the amount payable in accordance with the applicant's bid) there shall be substituted—
- “(5) A wireless telegraphy licence granted in accordance with regulations under this section shall specify either—
- (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 shall be paid to OFCOM by the person to whom the licence is granted in accordance with the terms of the licence.”
- (6) For subsection (6) there shall be substituted—
- “(5A) 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.
- (5B) Regulations under this section may provide that where a person—
- (a) makes an application for a licence in accordance with a procedure provided for by such regulations, but
  - (b) subsequently refuses the licence applied for,
- that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the licence.
- (6) Subsection (4) of section 1 is to apply in relation to sums that will or may become payable under regulations under this section subsequently to the grant of a wireless telegraphy licence as it applies to sums that will or may become payable under regulations under that section.”

## **168 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,

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of rights and obligations arising by virtue of such a licence or grant.

- (2) The transfers that may be authorised by regulations under this section are—
- (a) such transfers of all or any of the rights and obligations under a licence or grant as have the effect 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) such transfers of all or any those rights and obligations as have the effect 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 the preceding paragraphs 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 such a grant, as rights and obligations under a wireless telegraphy licence.
- (3) Regulations authorising the transfer of rights and obligations under a wireless telegraphy licence or grant of recognised spectrum access may—
- (a) authorise a partial transfer to be made by reference to such factors and apportionments, and to have effect in relation to such matters and periods, as may be described in the regulations, or as may be determined in accordance with them;
  - (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 licence or grant of recognised spectrum access and the grant or making of a new one in respect of the transfer;
  - (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;
  - (f) authorise OFCOM to require the payment to them of such sums as may be determined by or in accordance with the regulations in respect of determinations made by OFCOM for the purposes of the regulations or 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;
  - (i) impose requirements as to the procedure to be followed for the making of a transfer and, in particular, as to the notification about a transfer that must be given to OFCOM, or must be published, 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;

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- (k) set out the matters to be taken into account in the making of determinations under regulations under this section.
- (4) The transfer of rights and obligations under a wireless telegraphy licence or grant of recognised spectrum access shall be void except to the extent that it is made—
  - (a) in accordance with regulations under this section; or
  - (b) in accordance with a provision specified in subsection (5).
- (5) That provision is a provision which—
  - (a) is contained in a wireless telegraphy licence granted before the commencement of this section or in the first or any subsequent renewal after the commencement of this section of a licence so granted; and
  - (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 shall also be void if it is made in contravention of a direction given by OFCOM in exercise of a power conferred by regulations under this section.
- (7) Section 403 applies to the power of OFCOM to make regulations under this section.

#### *Variation and revocation of licences*

### **169 Variation and revocation of wireless telegraphy licences**

- (1) For section 1E of the Wireless Telegraphy Act 1949 (c. 54) (variation and revocation of licences for the provision of a telecommunication service) there shall be substituted—

#### **“1E Variation or revocation of a licence**

- (1) Where OFCOM propose to vary or revoke a wireless telegraphy licence, they shall give the person holding the licence a notification under this subsection—
  - (a) stating the reasons for the proposed variation or revocation; and
  - (b) specifying the period during which the person notified has an opportunity to do the things specified in subsection (2).
- (2) Those things are—
  - (a) making representations about the proposal; and
  - (b) if the proposal is the result of a contravention of a term, provision or limitation of the licence, complying with that term, provision or limitation.
- (3) Subject to subsections (4) to (6), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (4) OFCOM may, if they think fit, allow a longer period for doing those things either—
  - (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.
- (5) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.

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- (6) The person notified shall also have a shorter period if—
  - (a) OFCOM have reasonable grounds for believing that the case is a case of serious and repeated contravention or an urgent case;
  - (b) they have determined that, in the circumstances, a shorter period would be appropriate; and
  - (c) the shorter period has been specified in the notification.
- (7) A case is an urgent case if the failure to vary or revoke the licence will result in, or create 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 person in contravention, who—
    - (i) use stations or apparatus for wireless telegraphy; or
    - (ii) are communications providers or make associated facilities available.
- (8) Subsection (1) does not apply to a proposal to vary or revoke a licence if the proposal is made at the request or with the consent of the licence holder.
- (9) For the purposes of this section a contravention of a term, provision or limitation of a licence is a repeated contravention, in relation to a proposal to vary or revoke a licence, if it falls within subsection (10).
- (10) A contravention falls within this subsection if—
  - (a) a previous notification under subsection (1) has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence; and
  - (b) the subsequent notification under that subsection is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of subsection (11) that the contravention to which the previous notification related did occur.
- (11) Where OFCOM have given a notification under subsection (1), they shall, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification—
  - (a) decide whether or not to vary or revoke the licence in accordance with their proposal, or in accordance with that proposal but with modifications; and
  - (b) give the person holding the licence a notification of their decision.
- (12) The notification under subsection (11)—
  - (a) must be given no more than one week after the making of the decision to which it relates; and
  - (b) must, in accordance with that decision, either vary or revoke the licence or withdraw the proposal for a variation or revocation.
- (13) The reference in subsection (10) to a contravention of a term, provision or limitation of the same licence includes a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.

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- (14) In this section, “communications provider” and “associated facility” have the same meaning as in the Communications Act 2003.”
- (2) Nothing in this section is to apply in any case in which a notice under section 1E(1) of the Wireless Telegraphy Act 1949 (c. 54) was served before the commencement of this section.

*Wireless telegraphy register*

**170 Wireless telegraphy register**

- (1) OFCOM may by regulations make provision for the establishment and maintenance of a register of relevant information.
- (2) OFCOM are to 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 issue, 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) shall be open to inspection by the public.
- (5) Section 403 applies to the power of OFCOM to make regulations under this section.

*Information requirements*

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

- (1) In Part 3 of the Wireless Telegraphy Act 1949 (c. 54) (supplemental provisions), before section 14 there shall be inserted—

**“13A Information requirements**

- (1) Subject to the following provisions of this section, OFCOM may require a person who is using or has established, installed or used a station or apparatus for wireless telegraphy 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) OFCOM are not to require the provision of information under this section except—
- (a) by a demand for the information that sets out OFCOM’s reasons for requiring the information and the statistical purposes for which it is required; and



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- (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.
- (3) A demand for information required under this section must be contained in the notice served on the person from whom the information is required.
- (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) A person who fails to provide information in accordance with a requirement of OFCOM under this section is guilty of an offence.
- (6) In proceedings against a person for an offence under subsection (1) it shall be a defence for that 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.
- (7) A person is guilty of an offence if—
  - (a) in pursuance of any requirement under this section, he provides information that is false in any material particular; and
  - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.

### **13B Statement of policy on information gathering**

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to—
    - (a) the exercise of their powers under section 13A; 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 or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
  - (4) It shall be the duty of OFCOM, in exercising the powers conferred on them by section 13A, to have regard to the statement for the time being in force under this section.”
- (2) In section 14(1A) of that Act (summary offences carrying a maximum fine of level 3 on the standard scale), before paragraph (f) there shall be inserted—
- “(ea) any offence under section 13A(1) of this Act; or”.

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*Criminal proceedings etc.*

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

- (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 the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) (exemptions from licensing requirement),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 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 doing the things specified in subsection (3).
- (3) Those things are—
  - (a) making representations about the matters notified; and
  - (b) complying with any notified term, provision or limitation of which he remains in contravention.
- (4) Subject to subsections (5) to (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for doing those things either—
  - (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (7) The person notified shall also have a shorter period if—
  - (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention;
  - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
  - (c) the shorter period has been specified in the notification.

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

- (1) For the purposes of section 172 a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if—
  - (a) in the case of a contravention of a term, provision or limitation of a licence, it falls within subsection (2) or (3); or
  - (b) in the case of a contravention of a term, provision or limitation of an exemption, it falls within subsection (4) or (5).
- (2) A contravention of a term, provision or limitation of a licence falls within this subsection if—

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- (a) a previous notification under section 172 has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence;
  - (b) the person who was given that notification subsequently took steps for remedying the notified contravention; and
  - (c) the subsequent notification is given no more than twelve months after the day of the giving of the previous notification.
- (3) A contravention of a term, provision or limitation of a licence falls within this subsection if—
  - (a) the person concerned has been convicted of an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) in respect of the contravention to which the notification relates or in respect of another contravention of a term, provision or limitation of the same licence; and
  - (b) the subsequent notification is given before the end of the period of twelve months from the contravention in respect of which that person was convicted of that offence.
- (4) A contravention of a term, provision or limitation of an exemption falls within this subsection if—
  - (a) a previous notification under section 172 has been given in respect of the same contravention or in respect of another contravention of the same term, provision or limitation;
  - (b) the person who was given that notification subsequently took steps for remedying the notified contravention; and
  - (c) the subsequent notification is given no more than twelve months after the day of the giving of the previous notification.
- (5) A contravention of a term, provision or limitation of an exemption falls within this subsection if—
  - (a) the person concerned has been convicted of an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) in respect of the contravention to which the notification relates or in respect of another contravention of the same term, provision or limitation; and
  - (b) the subsequent notification is given before the end of the period of twelve months from the contravention in respect of which that person was convicted of that offence.
- (6) In calculating the periods of twelve months mentioned in subsections (3)(b) and (5)(b), the period between the institution of the criminal proceedings which led to the conviction and the conclusion of those proceedings shall be left out of account.
- (7) For the purposes of subsection (6) criminal proceedings shall be taken to be concluded when no further appeal against conviction may be brought without the permission of the court and—
  - (a) in a case where there is no fixed period within which that permission can be sought, permission has been refused or has not been sought; or
  - (b) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.
- (8) References in this section to remedying a contravention include references to each of the following—

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- (a) doing any thing the failure to do which, or the failure to do which within a particular period or before a particular time, constituted the whole or a part of the contravention;
  - (b) paying an amount to a person by way of compensation for loss or damage suffered by that person in consequence of the contravention;
  - (c) paying an amount to a person by way of compensation in respect of annoyance, inconvenience or anxiety to which he has been put in consequence of the contravention; and
  - (d) otherwise acting in a manner that constitutes an acknowledgement that the notified contravention did occur.
- (9) References in this section to a contravention of a term, provision or limitation of a licence include a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.

#### **174 Procedure for prosecutions of wireless telegraphy offences**

- (1) This section applies to proceedings against a person (“the defendant”) for an offence under section 1 of the Wireless Telegraphy Act 1949 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 the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) (exemptions from licensing requirement).
- (2) Proceedings to which this section applies are not to be brought at any time after the coming into force of this section unless, before they are brought, OFCOM have—
- (a) given the defendant a notification under section 172 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 at any time after the coming into force of this section in respect of a contravention if—
- (a) it is a contravention to which a notification given to that person under section 172 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 172 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 stations or apparatus for wireless telegraphy; or
    - (ii) are communications providers or make associated facilities available.
- (5) Where—
- (a) proceedings to which this section applies are brought by virtue of subsection (4) without a notification having been given to the defendant, and

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- (b) the defendant is convicted in those proceedings of the offence under section 1 of the Wireless Telegraphy Act 1949,
- the court, in determining how to deal with that person, shall have regard, in particular, to the matters specified in subsection (6).
- (6) Those 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) Notwithstanding anything in section 127 of the Magistrates' Courts Act 1980 (c. 43) or Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (limitation on time for bringing summary proceedings) where—
- (a) OFCOM give a notification under section 172 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 172(3) of this Act.
- (8) In this section, “stations for wireless telegraphy” and “apparatus for wireless telegraphy” have the same meanings as in the Wireless Telegraphy Act 1949 (c. 54).

## **175 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 1(2A)(b) or (c) of the Wireless Telegraphy Act 1949 (terms, provisions and limitations about service content);
  - (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 that Act have been brought against that person.
- (2) Where OFCOM impose a penalty on a person under this section, they shall—
- (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.
- (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.

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- (4) No proceedings for an offence under the Wireless Telegraphy Act 1949 shall 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) For the purposes of this section 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 by virtue 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 1996 Act in force in respect of a multiplex service to be broadcast using that station or apparatus.
- (6) In this section “multiplex service” means—
  - (a) a service for broadcasting for general reception that consists 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.

#### **176 Amount of penalty under s. 175**

- (1) The amount of a penalty imposed under section 175 is to be such amount, not exceeding the greater of the following, as OFCOM think fit, namely—
  - (a) £250,000; and
  - (b) 5 per cent. of the relevant amount of gross revenue.
- (2) In subsection (1) “the relevant amount of gross revenue” means the amount specified in section 177.
- (3) 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 (1)(a).
- (4) No order is to be made containing provision authorised by subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

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

- (1) The relevant amount of gross revenue for the purposes of section 176, 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 twelve 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 revenues.
- (2) The accounting period or periods referred to in subsection (1) are—

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- (a) every accounting period of his to end within the period of twelve months immediately preceding the contravention; and
  - (b) if there is no such accounting period, the accounting period of his which is current at the time of the contravention.
- (3) In this section, 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,shall 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) Section 13A of the Wireless Telegraphy Act 1949 (c. 54) is to apply for the purpose of ascertaining the amount of a person's gross revenue for any period for the purposes of section 176 of this Act and this section as it applies for the purpose of obtaining information for statistical purposes about matters relating to the establishment, installation or use by that person of a station or 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 twelve month period; and
  - “gross revenue”, in relation to a person, means the gross revenue of an undertaking carried on by that person.

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## 178 Proceedings for an offence relating to apparatus use

(1) Section 11 of the Wireless Telegraphy Act 1949 (notices enforcing regulations on the use of apparatus) shall have effect with the following amendments in relation to any notice under subsection (1) or (2) of that section that is served after the coming into force of this subsection—

- (a) paragraph (i) of the proviso to subsection (1) shall be omitted; and
- (b) for subsections (3) to (6) there shall be substituted—

“(2A) Where an appeal with respect to a notice under this section is pending—

- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
- (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal;

but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(2B) For the purposes of this section an appeal under section 192 of the Communications Act 2003 with respect to a notice under this section or a further appeal relating to the decision on such an appeal is pending unless—

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision on the appeal; or
- (b) no further appeal against a decision made on the appeal or on any such further appeal may be brought without the permission of the court and—
  - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
  - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

(2C) No proceedings for an offence of contravening a notice under this section may be commenced in Scotland—

- (a) until the time during which an appeal against such a notice may be brought has expired; or
- (b) where such an appeal has been brought, until that appeal has been determined.

(2D) Such proceedings in Scotland must be commenced within six months of—

- (a) where no appeal has been brought, the time referred to in paragraph (a) of subsection (2C); and
- (b) where an appeal has been brought and determined, the date of that determination.”



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- (2) Section 12 of that Act (enforcement of regulations as to sales of apparatus etc.) shall have effect in relation to any notices served under subsection (1) of that section after the coming into force of this section with the substitution of the following subsections for subsections (2) to (4)—

“(1A) Where an appeal with respect to a notice under subsection (1) of this section is pending—

- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
- (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal;

but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(1B) For the purposes of this section any appeal under section 192 of the Communications Act 2003 with respect to a notice under this section or a further appeal relating to the decision on that appeal is pending unless—

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision; or
- (b) no further appeal against any decision made on the appeal or on any such further appeal may be brought without the permission of the court and—
  - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
  - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

(1C) No proceedings for an offence of contravening a notice under this section may be commenced in Scotland—

- (a) until the time during which an appeal against such a notice may be brought has expired; or
- (b) where such an appeal has been brought, until that appeal has been determined.

(1D) Such proceedings in Scotland must be commenced within six months of—

- (a) where no appeal has been brought, the time referred to in paragraph (a) of subsection (1C); and
- (b) where an appeal has been brought and determined, the date of that determination.”

## **179 Modification of penalties for certain wireless telegraphy offences**

- (1) In subsection (1) of section 14 of the Wireless Telegraphy Act 1949 (c. 54) (either way offences), for paragraphs (aa) and (ab) there shall be substituted—

“(aa) any offence under section 1(1) of this Act consisting in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of

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making a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41));

- (ab) any offence under section 1A of this Act where the relevant contravention of section 1 would constitute an offence falling within paragraph (aa);”.

- (2) After subsection (1A), there shall be inserted—

“(1AA) A person committing—

- (a) an offence under section 1(1) of this Act other than—  
 (i) one which falls within subsection (1)(aa), or  
 (ii) one which falls within subsection (1A)(a), or  
 (b) an offence under section 1A of this Act other than—  
 (i) one which falls within subsection (1)(ab), or  
 (ii) one which falls within subsection (1A)(aa),

shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”

- (3) In section 79(1) of the Telecommunications Act 1984 (c. 12) (offences in respect of which apparatus may be seized), after paragraph (b) there shall be inserted—

“(bza) any offence under section 1A of that Act other than one where the relevant contravention of section 1 of that Act would constitute an offence so consisting;”.

- (4) This section only applies in relation to offences committed after the commencement of this section.

## **180 Fixed penalties for certain wireless telegraphy offences**

Schedule 6 (which makes provision as respects fixed penalty notices for summary offences under the Wireless Telegraphy Act 1949 (c. 54)) shall have effect.

## **181 Power of arrest**

- (1) In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (offences for which power of summary arrest available), after paragraph 2 there shall be inserted—

“*Wireless Telegraphy Act 1949*

- 2A An offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way).”

- (2) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (offences for which power of summary arrest available), after paragraph (i) there shall be inserted—

“(j) an offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way);”.

## **182 Forfeiture etc. of restricted apparatus**

- (1) Apparatus to which this section applies shall be liable to forfeiture if, immediately before being seized, it was in a person's custody or control in contravention of a prohibition imposed by an order under section 7 of the Wireless Telegraphy Act 1967 (c. 72) (restriction on dealings in and custody of certain apparatus).
- (2) This section applies to apparatus if it has been seized—
  - (a) in pursuance of a warrant granted under section 15(1) of the Wireless Telegraphy Act 1949; or
  - (b) in the exercise of the power conferred by section 79(3) of the Telecommunications Act 1984 (c. 12).
- (3) Apparatus forfeited under this section is to be forfeited to OFCOM and may be disposed of by them in any manner they think fit.
- (4) Schedule 7 (which makes provision in relation to the seizure and forfeiture of apparatus) shall have effect.
- (5) The preceding provisions of this section and Schedule 7 apply only in relation to apparatus seized after the commencement of this section.
- (6) Sections 80 and 81 of the Telecommunications Act 1984 (c. 12) (which make provision for forfeiture of apparatus) are not to apply in relation to apparatus seized after the commencement of this section.
- (7) In section 7(5) of the Wireless Telegraphy Act 1967 (c. 72), paragraph (b) (which allows a person to have custody or control of restricted apparatus when authorised otherwise than by the Secretary of State) shall cease to have effect.

### *Construction of 1949 Act*

## **183 Modification of definition of “undue interference”**

For subsection (5) of section 19 of the Wireless Telegraphy Act 1949 (c. 54) (meaning of undue interference) there shall be substituted—

- “(5) Interference with any wireless telegraphy is not to be regarded as undue for the purposes of this Act unless it is also harmful.
- (5A) For the purposes of this Act interference is harmful if—
- (a) it creates dangers, or risks of danger, in relation to the functioning of any service provided by means of wireless telegraphy for the purposes of navigation or otherwise for safety purposes; or
  - (b) it degrades, obstructs or repeatedly interrupts anything which is being broadcast or otherwise transmitted—
    - (i) by means of wireless telegraphy; and
    - (ii) in accordance with a licence under this Act, regulations under the proviso to section 1(1) of this Act or a grant of recognised spectrum access under Chapter 2 of Part 2 of the Communications Act 2003 or otherwise lawfully.”

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

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#### **184 Modification of definition of “wireless telegraphy”**

- (1) The Secretary of State may by order modify the definition of “wireless telegraphy” in section 19(1) of the Wireless Telegraphy Act 1949 by substituting a different frequency for the frequency (at the passing of this Act, 3,000 GHz) that is for the time being specified in that definition.
- (2) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.