



# Communications Act 2003

## 2003 CHAPTER 21

### PART 3

#### TELEVISION AND RADIO SERVICES

### CHAPTER 2

#### REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES

##### *The public teletext service*

#### **218 Duty to secure the provision of a public teletext service**

- (1) OFCOM must do all that they can to secure the provision, in accordance with this Chapter and Part 1 of the 1996 Act, of a teletext service that is available nationwide.
- (2) The service must consist of—
  - (a) a single teletext service provided in digital form with a view to its being broadcast by means of a television multiplex service; and
  - (b) for so long as Channel 4, S4C and one or more Channel 3 services are broadcast in analogue form, an analogue teletext service.
- (3) The service, if licensed to do so in accordance with section 219, may continue to include an analogue teletext service after it is no longer required under subsection (2) (b) to include such a service.
- (4) The analogue teletext service that must be or may be comprised in the public teletext service is a single additional television service that uses the combined spare capacity available for the provision of additional television services on the frequencies on which Channel 3 services, Channel 4 and S4C (or any of them) are broadcast in analogue form.

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- (5) For so long as the public teletext service must consist of both a teletext service provided in digital form and an analogue teletext service, OFCOM must secure that both services are provided by the same person.
- (6) But nothing in this section—
- (a) requires the contents of the two services comprised in the public teletext service to be the same;
  - (b) prevents the service from including different items for different parts of the United Kingdom or prevents the different items from being made available only in the parts of the United Kingdom for which they are included; or
  - (c) prevents the licence holder from making arrangements authorised by virtue of section 220 for the provision of the whole or a part of the public teletext service by another.
- (7) OFCOM must exercise their powers—
- (a) to make frequencies available for the purposes of Channel 3 services, Channel 4 and S4C; and
  - (b) to make determinations for the purposes of section 48(2)(b) of the 1990 Act (determinations of spare capacity),
- in a manner that takes account of their duty under this section.

## **219 Licensing of the public teletext service**

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of the public teletext service is a licence under Part 1 of that Act complying with this section.
- (2) The licence—
- (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
  - (b) shall be renewable, on one or more occasions, under section 222.
- (3) For the purposes of subsection (2) a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (4) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (5) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of any charges on persons in respect of their reception in the United Kingdom of the licensed service.
- (6) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (5).
- (7) The service authorised by a licence under this section, so far as it comprises a service provided in digital form, is a qualifying service for the purposes of Part 1 of the 1996 Act.

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- (8) Schedule 10 (which makes further provision about the award and grant of the licence for the public teletext service and about the conditions and enforcement of that licence) shall have effect.

## **220 Delegation of provision of public teletext service**

- (1) The licence for the provision of the public teletext service may—
- (a) include provision enabling the licence holder to authorise an eligible person to provide the whole or a part of the public teletext service on his behalf; and
  - (b) impose conditions subject to and in accordance with which the whole or a part of that service may be provided by a person authorised by the licence holder.
- (2) The conditions of the licence to provide the public teletext service apply in relation to its provision by a person authorised to do so on the licence holder's behalf as they apply to its provision by the licence holder.
- (3) A contravention of those conditions by a person so authorised shall be treated for the purposes of this Chapter and the 1990 Act as a contravention on the part of the licence holder.
- (4) In this section “eligible person” means a person who is not a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to the licence for the public teletext service.

## **221 Replacement of existing public teletext provider's licence**

- (1) It shall be the duty of OFCOM to make an offer under this section to the person who, when the offer is made, is the holder of the licence to provide the existing service (the “existing licence”).
- (2) The offer made to a person under this section—
- (a) must be an offer to exchange his existing licence for a replacement licence; and
  - (b) must be made as soon as practicable after the television transfer date.
- (3) The replacement licence is to be one which is granted—
- (a) for the purposes of section 218 of this Act; and
  - (b) in accordance with section 219 of this Act and the provisions of Part 1 of the 1990 Act;
- but Part 1 of Schedule 10 to this Act is not to apply in the case of the replacement licence.
- (4) Where OFCOM make an offer under this section, the service which they are proposing to license by or under the replacement licence must be a service which comprises both—
- (a) a service that appears to OFCOM to be equivalent in all material respects to the existing service; and
  - (b) a service that appears to them to be equivalent in all material respects to the teletext service in digital form which that person is required to provide by virtue of section 30 of the 1996 Act.
- (5) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of—

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- (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
  - (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.
- (6) That offer must also propose conditions allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.
- (7) An offer under this section must set out—
  - (a) the terms of the proposed replacement licence;
  - (b) the conditions on which OFCOM are proposing to grant the replacement licence;
  - (c) the period for which the offer is open;
  - (d) the time as from which it is proposed the replacement licence will take effect if the offer is accepted; and
  - (e) the time from which the existing licence will cease to have effect if the offer is not accepted.
- (8) The times set out under subsection (7) must—
  - (a) in the case of the time set out under paragraph (d), be in the period of twelve months beginning with the television transfer date; and
  - (b) in the case of the time set out under paragraph (e), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (9) Where the person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him—
  - (a) he is entitled to be granted the replacement licence in the terms, and on the conditions, set out in the offer; and
  - (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct.
- (10) Where the person to whom an offer has been made under this section—
  - (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
  - (b) rejects the offer before the end of that period,the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (7)(e).
- (11) In this section “the existing service” means the teletext service which—
  - (a) is being provided immediately before the television transfer date on the combined spare capacity available for the provision of additional television services on frequencies on which Channel 3 services and Channel 4 are provided; and
  - (b) is the service by reference to which the Independent Television Commission have discharged their duty under section 49(2) of the 1990 Act.

- (12) In this section “qualifying revenue” means the revenue which would be qualifying revenue (within the meaning of section 52 of the 1990 Act) in relation to the holder of a licence to provide the analogue teletext service comprised in the public teletext service.

## **222 Renewal of public teletext licence**

- (1) The holder of the licence to provide the public teletext service may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.
- (2) An application for renewal may only be made in the period which—
- (a) begins four years before the end of the current licensing period; and
  - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.
- (3) A determination for the purposes of subsection (2)(b)—
- (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to the holder, at the time of the determination, of the licence to provide the public teletext service.
- (4) Where OFCOM receive an application under this section for the renewal of a licence, they must—
- (a) decide whether they will be renewing the licence;
  - (b) if they decide that they will be, determine in accordance with section 223 the financial terms on which the licence will be renewed; and
  - (c) notify the applicant of their decision and determination.
- (5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if—
- (a) references to the award of a licence were references to its renewal; and
  - (b) the reference in subsection (7)(a) to section 19(1) of that Act were a reference to paragraph 7 of Schedule 10.
- (6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—
- (a) the public service remit for the public teletext service;
  - (b) news; and
  - (c) regional matters.
- (7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for the public teletext service which would differ in any material respect from the licensed service.
- (8) In all cases in which—
- (a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and
  - (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal, they must grant the renewal as soon as reasonably practicable.

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- (9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.
- (10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions subject only to such modifications as are required to give effect, in accordance with the determination under subsection (4)(b), to paragraph 7 of Schedule 10.
- (11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—
- (a) to make a decision or determination, or
  - (b) to take any other step under this section,
- at any time after an order under section 230 has come into force preventing the renewal of the licence.
- (12) For the purposes of this section a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (13) In this section “tender notice” means a notice under paragraph 1 of Schedule 10.

## **223 Financial terms of licence renewed under s. 222**

- (1) The determination under section 222(4)(b) must comprise—
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period;
  - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which he will be required by those conditions to pay to OFCOM.
- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with Part 1 of Schedule 10.
- (3) For the purposes of subsection (1)(b)—
- (a) different percentages may be determined for different accounting periods; and
  - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) In this section “renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.
- (5) Part 3 of Schedule 10 applies for construing this section as it applies for construing that Schedule.