

SCHEDULES

SCHEDULE 10

Section 219

LICENSING THE PUBLIC TELETEXT SERVICE

PART 1

APPLICATIONS FOR AND AWARD OF LICENCE

Notice of proposal to grant licence

- 1 (1) Where OFCOM propose to grant a licence to provide the public teletext service they must publish a notice stating that they are proposing to do so.
- (2) The notice must—
 - (a) specify the digital capacity which is available for the public teletext service on television multiplex services;
 - (b) specify whether the licence will require the public teletext service to comprise a service to be provided for broadcasting in analogue form;
 - (c) invite applications for the licence;
 - (d) specify the closing date for applications;
 - (e) specify the fee payable on the making of an application for the licence; and
 - (f) specify the percentage of qualifying revenue for each accounting period of the licence holder which OFCOM have determined to be the percentage of that revenue that will have to be paid to them.
- (3) Where the licence is to comprise an analogue teletext service the notice must specify—
 - (a) the television broadcasting service or services on whose frequency or frequencies the services are to be provided; and
 - (b) the extent and nature of the spare capacity which is to be allocated by the licence.
- (4) For the purposes of sub-paragraph (2)(f)—
 - (a) different percentages may be determined and specified for different accounting periods; and
 - (b) the percentages that may be determined and specified for an accounting period include a nil percentage.
- (5) A notice under this paragraph is to be published in such manner as OFCOM consider appropriate.

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Guidance as to applications

- 2 (1) When publishing a notice under paragraph 1, OFCOM must publish with it some general guidance to applicants about what is likely to make proposals relating to the matters mentioned in paragraph 3(1)(c) to (e) acceptable to them.
- (2) Guidance published under this paragraph must include examples.

Applications for the licence

- 3 (1) An application made in response to a notice under paragraph 1 must be accompanied by—
 - (a) the fee specified in the notice as payable on the making of the application;
 - (b) a technical plan complying with sub-paragraph (2);
 - (c) the applicant's proposals for providing, or securing the provision of, a service that fulfils the public service remit for the public teletext service;
 - (d) the applicant's proposals for including news items in the service and for securing that the news items included in the service are up to date and regularly revised;
 - (e) the applicant's proposals for the inclusion in the service of material that is of particular interest to persons living in different parts of the United Kingdom;
 - (f) the applicant's cash bid in respect of the licence; and
 - (g) such information as OFCOM may reasonably require about the matters mentioned in sub-paragraph (3).
- (2) The technical plan must indicate—
 - (a) the nature of the public teletext service which the applicant is proposing to provide; and
 - (b) the nature of any services the provision of which, in accordance with proposals made by another person, would be secured by the applicant in accordance with provision made under section 220.
- (3) The matters about which OFCOM may require information under sub-paragraph (1)(g) are—
 - (a) the applicant's present financial position; and
 - (b) his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving an application under this Schedule and before disposing of it, OFCOM may require the applicant to furnish additional information about any one or more of the following—
 - (a) the matters that must be indicated in the technical plan;
 - (b) the applicant's proposals with respect to the matters mentioned in sub-paragraph (1)(c) to (e); and
 - (c) the matters mentioned in sub-paragraph (3).
- (5) Any information to be furnished to OFCOM under this paragraph must be in such form, and must be verified, in such manner as they may require.

Notice inviting public representations

- 4 (1) As soon as reasonably practicable after the date specified in a notice under paragraph 1 as the closing date for applications, OFCOM must publish—

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- (a) the name of every person who has made an application to them in response to their notice;
 - (b) particulars of the technical plan submitted by each applicant;
 - (c) the proposals submitted by each applicant with respect to the matters mentioned in paragraph 3(1)(c) to (e);
 - (d) such other information connected with each application as OFCOM consider appropriate; and
 - (e) a notice under sub-paragraph (2).
- (2) The notice required by this paragraph is one that—
- (a) invites representations to be made to OFCOM with respect to the other matters published under this paragraph; and
 - (b) specifies the manner in which, and the time by which, such representations have to be made.
- (3) Publication of any information or notice under this paragraph is to be in such manner as OFCOM consider appropriate.

Determination of applications

- 5 (1) This paragraph applies where, in response to a notice under paragraph 1, a person has made an application for a licence to provide the public teletext service.
- (2) OFCOM must not proceed to consider whether to award the applicant the licence in accordance with the following provisions of this paragraph unless it appears to them—
- (a) that the applicant's technical plan, in so far as it involves the use of an electronic communications network, contains proposals that are acceptable to them;
 - (b) that the applicant's proposals with respect to the matters mentioned in paragraph 3(1)(c) to (e) are acceptable to them; and
 - (c) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force.
- (3) In determining whether it appears to them as mentioned in sub-paragraph (2), OFCOM must take account of any representations made to them in response to the invitation published under paragraph 4.
- (4) Sections 17 and 17A of the 1990 Act (award of licence to highest cash bidder and financial conditions) apply in relation to a licence to provide the public teletext service as they apply in relation to a Channel 3 licence, but with the modifications set out in sub-paragraphs (5) and (6).
- (5) In the application of section 17 of the 1990 Act in accordance with sub-paragraph (4) —
- (a) any reference to an applicant is to be construed as a reference to an applicant in whose case it appears to OFCOM as mentioned in sub-paragraph (2);
 - (b) the provisions of subsection (4) down to the end of paragraph (b) are to be omitted;
 - (c) in subsection (7)(a), the reference to section 19(1) of the 1990 Act is to be construed as a reference to paragraph 7 of this Schedule;

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- (d) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b)—
 - “(b) the name of every other applicant in whose case it appeared to OFCOM as mentioned in paragraph 5(2) of Schedule 10 to the Communications Act 2003;”
 - (e) in subsection (14), the references to a notice under section 15(1) of the 1990 Act and a notice under Part 1 of that Act shall each have effect as a reference to a notice under paragraph 1 of this Schedule.
- (6) In the application of section 17A of the 1990 Act in accordance with sub-paragraph (4)—
- (a) the reference in subsection (1)(b) to section 15(3)(g) of the 1990 Act shall have effect as a reference to paragraph 3(1)(g) of this Schedule; and
 - (b) the reference in subsection (3) to a notice under section 15(1) of the 1990 Act shall have effect as a reference to a notice under paragraph 1 of this Schedule.

Revocation of award

- 6 (1) This paragraph applies if, at any time after a licence to provide the public teletext service has been awarded to a person, but before it has come into force—
- (a) that person indicates to OFCOM that he does not intend to provide, or secure the provision of, the licensed service; or
 - (b) OFCOM have, for any other reason, reasonable grounds for believing that the licensed service will not be provided once the licence has come into force.
- (2) OFCOM must revoke the licence by serving a notice of revocation on the person to whom it was awarded.
- (3) OFCOM may then award the licence again in accordance with section 17 of the 1990 Act (as applied by paragraph 5 of this Schedule) as if the person whose licence is revoked had not made an application.
- (4) Sub-paragraph (3) has effect subject to subsection (14) of section 17 of the 1990 Act (as so applied) (re-publication of invitation to make applications) as if the reference in that subsection to the following provisions of Part 1 of that Act included a reference to that sub-paragraph.
- (5) Before acting under sub-paragraphs (2) and (3) in a case falling within sub-paragraph (1)(b), OFCOM must serve a notice on the person awarded the licence stating their grounds for believing that the licensed service will not be provided once the licence has come into force.
- (6) Where such a notice is required to be given, OFCOM must not revoke the licence unless they have given the person to whom it was awarded a reasonable opportunity of making representations to them about the matters by reference to which they are proposing to revoke it.
- (7) In the case of a licence to provide a service that must comprise both—
- (a) an analogue teletext service, and
 - (b) a teletext service provided in digital form,
- the references in sub-paragraphs (1) and (5) to the licensed service are references to one or both of those services.

PART 2

CONDITIONS AND ENFORCEMENT OF LICENCE

Payments to be made in respect of the public teletext service

- 7 (1) A licence to provide the public teletext service must include conditions requiring the licence holder to pay the following amounts to OFCOM (in addition to any fees required to be so paid by virtue of section 4(1)(b) of the 1990 Act)—
- (a) a specified amount in respect of the first complete calendar year falling within the licence period;
 - (b) in respect of each subsequent year falling wholly or partly within the licence period, that amount increased by the appropriate percentage;
 - (c) in respect of each accounting period of his falling within the licence period, an amount representing a specified percentage of qualifying revenue for that accounting period.
- (2) The amount specified for the purposes of sub-paragraph (1)(a) must be—
- (a) in the case of the replacement licence under section 221, the amount proposed in accordance with subsection (5)(a) of that section;
 - (b) in the case of a licence renewed under section 222, the amount determined under section 223(1)(a); and
 - (c) in any other case, the amount specified in the licence holder’s cash bid.
- (3) The percentage specified for the purposes of sub-paragraph (1)(c) in respect of an accounting period must be—
- (a) in the case of the replacement licence under section 221, nil;
 - (b) in the case of a licence renewed under section 222, the percentage determined under section 223(1)(b); and
 - (c) in any other case, the percentage determined and specified for the purposes of paragraph 1(2)(f) of this Schedule.
- (4) A licence to provide the public teletext service may also include conditions—
- (a) enabling OFCOM to estimate before the beginning of an accounting period the amount due for that period by virtue of any condition imposed under this paragraph; and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may, in particular, include conditions—
- (a) authorising OFCOM to revise an estimate on one or more occasions;
 - (b) requiring them to alter the amounts of the instalments payable by the licence holder to take account of the revised estimate;
 - (c) providing for the adjustment of an overpayment or underpayment.
- (6) This paragraph has effect subject to sections 225 and 226 and to the requirement in section 221(5)(b).
- (7) In this paragraph “the appropriate percentage” has the same meaning as in section 19 of the 1990 Act.

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Corrections and statements of findings by the public teletext provider

- 8 (1) Section 40 of the 1990 Act (power to direct correction or a statement of findings) shall have effect in relation to the public teletext service as it has effect in relation to a Channel 3 service but as if the references in subsection (4) to a programme were references to an item.
- (2) OFCOM's powers by virtue of this paragraph in relation to any matter are not affected by any prior exercise by them in relation to that matter of their powers under either or both of paragraphs 9 and 10.

Enforcement of the licence for the public teletext service

- 9 (1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has—
- (a) contravened a condition of the licence, or
 - (b) failed to comply with a direction given to him by OFCOM under or by virtue of a provision of the 1990 Act, the 1996 Act or Part 3 of this Act,
- they may serve on him a notice requiring him to pay a specified financial penalty to them.
- (2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is 5 per cent. of the qualifying revenue for his last complete accounting period.
- (3) Where an accounting period by reference to which the maximum amount of a penalty falls to be calculated has not ended when the penalty is imposed, the amount taken into account in respect of that period is to be the amount estimated by OFCOM.
- (4) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.

Power to shorten licence period

- 10 (1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has—
- (a) contravened a condition of the licence, or
 - (b) failed to comply with a direction given to him by OFCOM under or by virtue of any provision of the 1990 Act, the 1996 Act or Part 3 of this Act,
- they may serve on him a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.
- (3) Where a licence is due to expire on a particular date by virtue of a notice served on a person under this paragraph, OFCOM may, on the application of that person, revoke that notice by a further notice served on him at any time before that date.

- (4) OFCOM may exercise their power under sub-paragraph (3) only if they are satisfied that, since the date of the earlier notice, the conduct of the licence holder in relation to the operation of the licensed service has been such as to justify the revocation of that notice.

Revocation for contravention of condition or direction

- 11 Section 42 of the 1990 Act (revocation for contravention) shall apply in relation to the licence to provide the public teletext service as it applies in relation to a licence to provide a Channel 3 service.

Penalty on revocation

- 12 (1) Where OFCOM revoke the licence to provide the public teletext service (whether under paragraph 6 or a provision of the 1990 Act or 1996 Act), they must serve on the licence holder a notice requiring him to pay a specified financial penalty to them.
- (2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is the maximum given by sub-paragraphs (3) and (4).
- (3) In a case where the licence is revoked under paragraph 6 or the penalty is imposed before the end of the first complete accounting period of the licence holder to begin in the licence period, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
 - (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
- (4) In any other case, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
 - (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the licence period.
- (5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.
- (6) A financial penalty that must be paid by virtue of this paragraph by a body of any description shall also be recoverable—
- (a) as a debt due to OFCOM from the person who controls the body; or
 - (b) if two or more persons control it, as a debt due jointly and severally from them all.
- (7) Sub-paragraph (6) is in addition to the provision for the recovery of penalties contained in section 346, but the amount recovered in respect of any one penalty must not exceed the full amount of that penalty.
- (8) References in this paragraph to a person controlling a body are references to his controlling it within the meaning of Schedule 2 to the 1990 Act.

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Power to modify penalties in paragraph 12

- 13 (1) The Secretary of State may by order substitute a different sum for the sum for the time being specified in paragraph 12(3)(a) or (4)(a).
- (2) No order is to be made containing provision authorised by this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

PART 3

INTERPRETATION OF SCHEDULE

- 14 In this Schedule “licence period”, in relation to a licence, means the period for which the licence is in force.
- 15 (1) For the purposes of this Schedule the qualifying revenue for an accounting period of the holder of a licence to provide the public teletext service consists of the aggregate of all the following amounts—
- (a) the amounts received or to be received by a person mentioned in subparagraph (2) in consideration of the inclusion in the licensed service in that period of advertisements or other items; and
 - (b) the amounts received or to be received by such a person in respect of the provision of the service from—
 - (i) a person authorised by the licence holder to provide the whole or a part of the licensed service; or
 - (ii) a person who is a connected person in relation to a person so authorised.
- (2) Those persons are—
- (a) the licence holder; or
 - (b) a person who is a connected person in relation to the licence holder without being a person authorised by the licence holder to provide the whole or a part of the licensed service.
- (3) Part 1 of Schedule 7 to the 1990 Act applies for determining qualifying revenue for the purposes of this Schedule as it applies for the purposes of Part 1 of that Act.
- (4) Where, in the case of the licence to provide the public teletext service—
- (a) the first complete accounting period of the licence holder to fall within the licence period does not begin at the same time as the licence period, or
 - (b) the last complete accounting period of his to fall within the licence period does not end at the same time as the licence period,
- references in this Schedule to an accounting period of the licence holder include references to such part of the accounting period preceding the first complete accounting period, or (as the case may be) following the last complete accounting period, as falls within the licence period.
- (5) In this paragraph “connected person” has the same meaning as in Schedule 2 to the 1990 Act.