

## SCHEDULES

### SCHEDULE 2

#### Amendments to Wireless Telegraphy Act 2006

#### 10. After section 32 insert—

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

**32A.**—(1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their radio spectrum functions.

(2) The persons falling within this subsection are—

- (a) a person who is using, or has established, installed or used a wireless telegraphy station or wireless telegraphy apparatus, and
- (b) any other person who appears to OFCOM to have information required by them for the purposes of their radio spectrum functions.

(3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require to ascertain whether a contravention has occurred of—

- (a) a term, provision or limitation specified in regulations under section 8, or
- (b) a term, provision or limitation of a wireless telegraphy licence.

(4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(5) The powers in this section are subject to the limitations in section 32B.

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

**32B.**—(1) This section limits the purposes for which, and manner in which, information may be required under section 32A.

(2) OFCOM are not to require the provision of information for the purpose of ascertaining whether a contravention of a term, provision or limitation has occurred or is occurring, unless—

- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;
- (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the term, provision or limitation in question has been complied with;
- (c) the term, provision or limitation in question is one which OFCOM have reason to suspect has been or is being contravened;
- (d) the term, provision or limitation in question relates to the effective and efficient use of frequencies; or

*Status: This is the original version (as it was originally made).*

- (e) the term, provision or limitation in question relates to sums payable to OFCOM in respect of a wireless telegraphy licence.
- (3) OFCOM are not to require the provision of information except—
  - (a) by a demand for the information that describes the required information and sets out OFCOM’s reasons for requiring it; and
  - (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM’s functions.
- (4) A demand for information must be contained in a notice served on the person from whom the information is required.

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

**32C.**—(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 32A, they may give that person a notification under this section.

- (2) A notification under this section is one which—
  - (a) sets out the determination made by OFCOM;
  - (b) specifies the requirement and contravention in respect of which the determination has been made;
  - (c) specifies the period during which the person notified has an opportunity to make representations;
  - (d) specifies information to be provided by the person to OFCOM; and
  - (e) specifies any penalty which OFCOM are minded to impose in accordance with section 32D.
- (3) A notification under this section—
  - (a) may be given in respect of more than one contravention; and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (4) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if—
  - (a) the contravention is one occurring after the time of the giving of the earlier notification;
  - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
  - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

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

**32D.**—(1) This section applies where a person is given a notification under section 32C which specifies a proposed penalty.

- (2) OFCOM may specify a penalty only if no proceedings for an offence under section 33 have been brought against the person in respect of the contravention.
- (3) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(4) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(5) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—

- (a) the giving of a confirmation decision under section 32E(4)(c) which requires immediate action; or
- (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(6) The amount of a penalty under subsection (5) is to be such amount not exceeding £20,000 per day as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed

(7) The amount of any other penalty specified under this section is to be such amount not exceeding £2 million as OFCOM determine to be both—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

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

**32E.**—(1) This section applies where—

- (a) a person has been given a notification under section 32C;
- (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
- (c) the period allowed for the making of representations has expired.

(2) OFCOM may—

- (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements in accordance with the notification under section 32C; or
- (b) inform the person that they are satisfied with the person’s representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 32C.

(4) A confirmation decision—

- (a) must be given to the person without delay;
- (b) must include reasons for the decision;
- (c) may require immediate action by the person to comply with a requirement notified under section 32C, or may specify a period within which the person must comply with the requirement; and

(d) may require the person to pay—

- (i) the penalty specified in the notification under section 32C, or
  - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person’s representations or steps taken by the person to comply with the requirement or remedy the consequences of the contravention,
- and may specify the period within which the penalty is to be paid.

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

(5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.

(6) That duty is enforceable in civil proceedings by OFCOM—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
- (c) for any other appropriate remedy or relief.

(7) A penalty imposed by a confirmation decision—

- (a) must be paid to OFCOM; and
- (b) if not paid within the period specified by them, is to be recoverable by them accordingly.”