

# Wireless Telegraphy Act 2006 – Proposed amendments to implement the revised EU Electronic Communications Framework.

## Part 1

### General Provision about Radio Spectrum

#### *Radio spectrum functions of OFCOM*

#### 1 General functions

(1) It is a function of OFCOM--

- (a) to give such advice in relation to the use of the electromagnetic 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 the spectrum for wireless telegraphy.

(2) It is a function of OFCOM, in relation to the use of the electromagnetic 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 require for the purpose of securing compliance with the international obligations of the United Kingdom.

(3) The advice, other services and records that OFCOM may give, provide or maintain under this section include advice, other services and records with respect to the use of the electromagnetic spectrum at places outside the United Kingdom.

(4) The powers of OFCOM under Part 1 of the Communications Act 2003 (c 21) 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 OFCOM's functions under this section, information about--

- (a) the demands for use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom;
- (b) the effects, in the United Kingdom, of any such use of the 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 electromagnetic 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 or to any other person; and
- (b) is to be made on such terms and conditions as OFCOM consider appropriate;

and the terms and conditions may include terms requiring the repayment of the grant in specified circumstances.

(7) The consent of the Treasury is 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 may 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.

## 2 United Kingdom Plan for Frequency Authorisation

(1) OFCOM must, from time to time as they think fit, publish a plan ("the United Kingdom Plan for Frequency Authorisation").

(2) The plan must set out--

- (a) in relation to the United Kingdom, the frequencies that--
  - (i) have been allocated for particular wireless telegraphy purposes, and
  - (ii) are available for assignment; and
- (b) the purposes for which the different frequencies have been allocated.

(3) Before publishing the plan, OFCOM must ensure that the criteria applied to determine the allocation of frequencies for particular purposes are--

- (a) objectively justified in relation to the frequencies or users to which they relate,
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;

- (c) proportionate to what they are intended to achieve; and
- (d) in relation to what they are intended to achieve, transparent.

### **3 Duties of OFCOM when carrying out functions**

- (1) In carrying out their radio spectrum functions, OFCOM must have regard, in particular, to--
  - (a) the extent to which the electromagnetic spectrum is available for use, or further use, for wireless telegraphy;
  - (b) the demand for use of the spectrum for wireless telegraphy; and
  - (c) the demand that is likely to arise in future for the use of the spectrum for wireless telegraphy.
- (2) In carrying out those functions, they must also have regard, in particular, to the desirability of promoting--
  - (a) the efficient management and use of the part of the electromagnetic 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) Subsection (4) has effect in the case of OFCOM's radio spectrum functions, other than their functions under sections 13 and 22.
- (4) In the application of this section to those functions, OFCOM may disregard such of the matters mentioned in subsections (1) and (2) 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.
- (5) Where it appears to OFCOM that a duty under this section conflicts with one or more of their duties under sections 3 to 6 of the Communications Act 2003 (c 21), priority must be given to their duties under those sections.
- (6) Where it appears to OFCOM that a duty under this section conflicts with another in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

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

It is a function of OFCOM to provide a service consisting in the giving of advice and assistance to persons complaining of interference with wireless telegraphy.

### **5 Directions of Secretary of State**

- (1) The Secretary of State may by order give general or specific directions to OFCOM about the carrying out by them of their radio spectrum functions.

(2) An order under this section may require OFCOM to secure that such frequencies of the electromagnetic spectrum as may be specified in the order are kept available or become available--

- (a) for such uses or descriptions of uses, or
- (b) for such users or descriptions of users,

as may be so specified.

(3) An order under this section may require 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, or determined by the Secretary of State in accordance with, the order.

(4) The provisions are--

- (a) section 8(3);
- (b) sections 12 to 14; and
- (c) sections 21 to 23.

(5) This section does not restrict the Secretary of State's power under section 5 of the Communications Act 2003 (c 21) (directions in respect of networks and spectrum functions).

## 6 Procedure for directions

(1) An order under section 5 must state the purpose for which a direction is given, unless it falls within section 5(2) or (3).

(2) Before making an order under section 5, the Secretary of State must consult--

- (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 consult before making the order.

(3A) Before making an order under section 5, the Secretary of State must take due account of the desirability of not favouring—

(a) one form of electronic communications network, electronic communications service or associated facility, or

(b) one means of providing or making available such a network, service or facility,

over another

(4) No order is to be made under section 5 unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(5) But subsection (4) does not apply where--

- (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,

the Secretary of State considers 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 under section 5 without a draft of the order having been approved, the order ceases to have effect at the end of the period of forty days beginning with the 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 is to 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***

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

(1) This section applies where OFCOM, in the exercise of their radio spectrum functions, have reserved frequencies for the broadcasting of television programmes.

(2) OFCOM must, in carrying out those functions, exercise their powers so as to secure, so far as practicable, that the requirement in subsection (3) is satisfied.

(3) The 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) "Licensed television multiplex service" means a television multiplex service the provision of which is authorised by a licence under Part 1 of the Broadcasting Act 1996 (c 55).

(5) "Qualifying service" and "television multiplex service" each has the same meaning as in Part 3 of the Communications Act 2003 (c 21).

## **Part 2**

### **Regulation of Radio Spectrum**

#### **Chapter 1 Wireless Telegraphy Licences**

#### ***Licensing of wireless telegraphy***

#### **8 Licences and exemptions**

- (1) It is unlawful--
  - (a) to establish or use a wireless telegraphy station, or
  - (b) to instal or use wireless telegraphy apparatus,

except under and in accordance with a licence (a "wireless telegraphy licence") granted under this section by OFCOM.

(2) Subsection (1) does not apply to--

- (a) the use of a television receiver (within the meaning of Part 4 of the Communications Act 2003) for receiving a television programme; or
- (b) the installation of a television receiver for use solely for that purpose.

(3) OFCOM may by regulations exempt from subsection (1) the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus of such classes or descriptions as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be so specified.

(3A) OFCOM may not make regulations under subsection (3) specifying terms, provisions or limitations in relation to the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus for the provision of an electronic communications network or electronic communications service unless the terms, provisions or limitations are of a kind falling within Part A of the Annex to Directive 2002/20/EC of the European Parliament and of the Council.

(3B) Terms, provisions and limitations specified in regulations under subsection (3) must be--

- (a) objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate,
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons,
- (c) proportionate to what they are intended to achieve, and
- (d) in relation to what they are intended to achieve, transparent

(4) If OFCOM are satisfied that the conditions in subsection (5) ~~is~~are satisfied as respects the use of stations or apparatus of a particular description, they must make regulations under subsection (3) exempting the establishment, installation and use of a station or apparatus of that description from subsection (1).

~~(5) The condition is that the use of stations or apparatus of that description is not likely to involve undue interference with wireless telegraphy. The conditions are that the use of stations or apparatus of that description is not likely to --~~

- (a) involve undue interference with wireless telegraphy;
- (b) have an adverse effect on technical quality of service;
- (c) lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
- (d) endanger safety of life;
- (e) prejudice the promotion of social, regional or territorial cohesion; and
- (f) prejudice the promotion of cultural and linguistic diversity and media pluralism.

### **Review of long licences**

8A.—(1) Subsection (2) applies in respect of a wireless telegraphy licence where --

- (a) the licence is granted for a period of 10 years or more; and
- (b) the rights and obligations under it may not be transferred to another person.

(2) OFCOM must, at such intervals as they consider appropriate, or at the reasonable request of the holder of the licence—

(a) review whether the conditions in section 8(5) are met in relation to the use of a wireless telegraphy station or wireless telegraphy apparatus under the licence, and

(b) if the conditions are met, make regulations under section 8(3) exempting the establishment, installation or use of stations or apparatus of that description from section 8(1).

(3) The first review under this section, and the making of any regulations under section 8(3) in consequence of the review, must be completed on or before 19 December 2011.

### **Restriction on grant of exclusive licence**

8B.—(1) OFCOM may not grant an exclusive licence unless a condition in subsection (2) is met.

(2) Those conditions are—

(a) that it is necessary to grant an exclusive licence in order to protect safety of life services, or

(b) that there are other exceptional circumstances which, in OFCOM's opinion, justify the grant of an exclusive licence in order to ensure a general interest objective.

(3) The general interest objectives are—

(a) safety of life;

(b) the promotion of social, regional or territorial cohesion;

(c) avoidance of inefficient use of frequencies;

(d) the promotion of cultural and linguistic diversity and media pluralism;

(e) fulfilment of a requirement under the ITU Radio Regulations.

(4) In subsection (3) “the ITU Radio Regulations” means the radio regulations of the International Telecommunication Union.

(5) If OFCOM grant an exclusive licence they must—

(a) at such intervals as they consider appropriate, review whether a condition in subsection (2) continues to be met, and

(b) publish the outcome of the review in such manner as they think fit.

(6) In this section and section 8C, “exclusive licence” means a wireless telegraphy licence which includes a term **conferring** exclusive rights on the holder to use a frequency specified in the licence (throughout the United Kingdom or in a specific part of the United Kingdom).

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

8C.—(1) This section applies where—

(a) OFCOM propose to grant an exclusive licence, and

(b) they think that the grant of the licence would have a significant impact on a market for the use of the electromagnetic spectrum for wireless telegraphy in relation to which OFCOM have functions under the enactments relating to the management of the radio spectrum.

(2) Before granting the licence OFCOM must publish, in such manner as they think fit, notice of their intention to grant the licence.

(3) The notice must specify—

(a) OFCOM's reasons for proposing to grant an exclusive licence, and

(b) the period within which representations may be made to OFCOM.

(4) The period specified under subsection (3)(b) may not be less than one month beginning with the day on which the notice is published.

## 9 Terms, provisions and limitations

(1) A wireless telegraphy licence may be granted subject to such terms, provisions and limitations as OFCOM think fit.

(1A) But a licence in relation to the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus for the provision of an electronic communications network or electronic communications service may not be made subject to a term, provision or limitation unless the term, provision or limitation is of a kind falling within Part B of the Annex to Directive 2002/20/EC of the European Parliament and of the Council.

(2) In the case of a licence to establish a station, the limitations may, in particular, include limitations as to--

- (a) the position and nature of the station;
- (b) the purpose for which, the circumstances in which and the persons by whom the station may be used;
- (c) the apparatus that may be installed or used in the station.

(3) In the case of any other licence, the limitations may, in particular, include limitations as to--

- (a) the apparatus that may be installed or used;
- (b) the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used.

(4) The 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;
- (c) terms or provisions requiring the transmission or broadcasting of particular matters by that person;
- (d) terms, provisions or limitations requiring a satellite uplinker to suspend or cease uplinking, by means of satellite uplink apparatus, a service named by OFCOM in a notice given to the satellite uplinker under section 9A;
- (e) terms or provisions requiring a satellite uplinker to provide OFCOM with such information necessary for the purpose of determining whether section 9A applies in relation to a service uplinked by the satellite uplinker or for any purpose connected with the giving of a notice under section 9A as OFCOM may request by a notice in writing.

(5) A wireless telegraphy licence may be granted--

- (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.

(6) The terms, provisions and limitations of a wireless telegraphy licence granted to a person must not duplicate obligations already imposed on him by general conditions set under section 45 of the Communications Act 2003 (c 21) (power of OFCOM to set conditions in relation to electronic communications networks and services).

(7) In imposing terms, provisions or limitations on a wireless telegraphy licence, OFCOM may impose only those that they are satisfied are--

- (a) objectively justifiable in relation to the networks and services 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.

(8) This section has effect subject to [section 9ZA and to](#) regulations under section 14.

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

9ZA.—(1) OFCOM may grant a wireless telegraphy licence subject to a limitation on the nature of a station that may be established or used, or the apparatus that may be installed or used, only if the limitation is necessary for a purpose specified in subsection (2).

(2) Those purposes are—

- (a) avoiding undue interference with wireless telegraphy;
- (b) the protection of public health against electromagnetic fields;
- (c) ensuring technical quality of service;
- (d) ensuring maximisation of frequency sharing;
- (e) safeguarding the efficient management and use of the part of the electromagnetic spectrum available for wireless telegraphy;
- (f) ensuring the fulfilment of a general interest objective.

(3) OFCOM may grant a wireless telegraphy licence incorporating a provision requiring the use of a specified frequency for the activity authorised by the licence only if [the requirement is imposed in order to ensure the fulfilment of a general interest objective.](#)

(4) In this section “general interest objective” has the meaning given by section 8B(3).

(5) Subsection (6) applies where OFCOM think that the imposition of a limitation or provision within subsection (1) or (3) in relation to a wireless telegraphy licence would have a significant impact on a market for the use of the electromagnetic spectrum for wireless telegraphy in relation to which OFCOM have functions under the enactments relating to the management of the radio spectrum.

(6) Before deciding whether to impose the limitation or provision, OFCOM must consult the applicant for the licence and must take any representations into account.

(7) If OFCOM have imposed limitations or provisions under subsection (1) or (3) in relation to a wireless telegraphy licence, they must, at such intervals as they consider appropriate—

- (a) review whether those limitations or provisions are necessary, and
- (b) publish the outcome of the review in such manner as they think fit.

(8) But subsection (7) does not apply in relation to a provision requiring the use of a specified frequency for the activity authorised by the licence where the licence holder has an opportunity to ask for a different frequency to be specified.

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

9ZB.—(1) This section applies where OFCOM have imposed limitations or provisions of a kind falling within section 9ZA(1) or (3) in relation to a wireless telegraphy licence granted on or before 25 May 2011.

(2) As soon as reasonably practicable after 26 May 2016, OFCOM must review such limitations or provisions with a view to determining whether, if the licence had been granted after 25 May 2011, section 9ZA would have prevented OFCOM from imposing the limitation or provision.

(3) If OFCOM concludes that section 9ZA would have prevented the imposition of a limitation or provision, it must vary the licence in order to remove the limitation or provision.

(4) This section does not apply in relation to a provision requiring the use of a specified frequency for the activity authorised by the licence where the licence holder has an opportunity to ask for a different frequency to be specified.

#### **9A Notice to satellite uplinkers**

(1) This section applies where a relevant regulated television service or an on-demand programme service is provided by a person who is deemed to be under the jurisdiction of the United Kingdom for the purpose of the Audiovisual Media Services Directive by reason only of the person providing such a service by means of satellite uplink apparatus situated within the United Kingdom.

(2) OFCOM may give a notice in writing under this section to a satellite uplinker in relation to a relevant regulated television service if OFCOM are satisfied that the service is provided--

- (a) in contravention of a licence under Part 1 of the Broadcasting Act 1990 or Part 1 of the Broadcasting Act 1996; or
- (b) otherwise than pursuant to such a licence.

(3) OFCOM may give a notice in writing under this section to a satellite uplinker in relation to an on-demand programme service if OFCOM are satisfied that the service is provided--

- (a) in contravention of a requirement of Part 4A of the Communications Act 2003; or
- (b) otherwise than pursuant to a notification under section 368BA of the Communications Act 2003.

(4) Where a notice is given to a satellite uplinker under subsection (2)(a) or (3)(a) the notice must--

- (a) name the service;
- (b) specify the reasons why OFCOM consider that subsection (2)(a) or (3)(a) is satisfied; and
- (c) specify--

- (i) the date by which the satellite uplinker must cease the uplinking of the service; or
  - (ii) a period during which the satellite uplinker must suspend the uplinking of the service.
- (5) Where a notice is given to a satellite uplinker under subsection (2)(b) or (3)(b) the notice must--
- (a) name the service; and
  - (b) specify--
    - (i) the date by which the satellite uplinker must cease the uplinking of the service; or
    - (ii) a period during which the satellite uplinker must suspend the uplinking of the service.

(6) In this section--

"relevant regulated television service" has the same meaning as in section 13 of the Broadcasting Act 1990;

"on-demand programme service" has the same meaning as in the Communications Act 2003 (see section 368A of that Act).

## **10 Procedure**

Schedule 1 (which makes provision about the grant, revocation and variation of wireless telegraphy licences) has effect.

## **11 Surrender of licence**

- (1) Where a wireless telegraphy licence has expired or has been revoked, it is the duty of--
- (a) the person to whom the licence was granted, and
  - (b) any other person in whose possession or under whose control the licence may be,

to cause it to be surrendered to OFCOM if required by them to do so.

(2) Subsection (1) does not apply to a licence that relates solely to receiving apparatus.

(3) A person commits an offence if--

- (a) he has a duty under subsection (1) to cause a wireless telegraphy licence to be surrendered to OFCOM; and
- (b) without reasonable excuse he fails or refuses to do so.

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## ***Charges etc***

## **12 Charges for grant of licence**

(1) A person to whom a wireless telegraphy licence is granted must pay to OFCOM--

- (a) on the grant of the licence, and
- (b) if regulations made by OFCOM so provide, subsequently at such times during its term and such times in respect of its variation or revocation as may be prescribed by the regulations,

the sums described in subsection (2).

(2) The sums are--

- (a) such sums as OFCOM may prescribe by regulations, or
- (b) if regulations made by OFCOM so provide, such sums (whether on the grant of the licence or subsequently) as OFCOM may determine in the particular case.

(3) Regulations under this section may--

- (a) confer exemptions from provisions of the regulations in particular cases; and
- (b) provide for sums paid to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as OFCOM think fit.

(4) On the grant of a licence in respect of which sums will or may subsequently become payable under regulations under this section, OFCOM may require such security to be given, by way of deposit or otherwise, for the payment of those sums as they think fit.

(5) Regulations under this section do not apply in relation to a licence granted in accordance with regulations under section 14, but this is subject to subsection (6).

(6) Regulations under or for the purposes of subsection (1)(b), so far as it relates to payments during the term of a licence, may be made so as to apply in relation to a licence granted in accordance with regulations under section 14, but only in the following cases--

- (a) where provision included in the licence with the consent of the holder of the licence provides for the regulations to apply;
- (b) where the licence includes terms restricting the exercise by OFCOM of their power to revoke the licence before the end of a period and that period has expired;
- (c) where the licence would, but for a variation, have ceased to have effect at the end of a period and that period has expired;
- (d) where the licence is a surrendered-spectrum licence.

(7) Provision may not be made by virtue of subsection (6)(c) or (d) without the consent of the Secretary of State.

(8) A wireless telegraphy licence is a "surrendered-spectrum licence" if--

- (a) it is granted under arrangements involving (before the grant or later) the variation, revocation or expiry of another wireless telegraphy licence;
- (b) the arrangements are with a view to enabling the holder of that other licence to comply with a limit applying to frequencies in respect of which a person may hold licences; and
- (c) it authorises the use after that variation, revocation or expiry of a frequency whose use until then was or is authorised by that other licence.

(9) In relation to a surrendered-spectrum licence there may be more than one such other licence ("predecessor licence") and a licence may be a predecessor licence to more than one surrendered-spectrum licence.

### 13 Matters taken into account

- (1) This section applies where OFCOM exercise a power under section 12 to prescribe sums payable in respect of wireless telegraphy licences, other than a power to prescribe sums payable where a licence is varied or revoked at the request or with the consent of the holder of the licence.
- (2) OFCOM may, if they think fit in the light (in particular) of the matters to which they must have regard under section 3, prescribe sums greater than those necessary to recover costs incurred by them in connection with their radio spectrum functions.
- (3) "Prescribe" means prescribe by regulations or determine in accordance with regulations.

### 14 Bidding for licences

- (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 wireless telegraphy licences must be made in accordance with a procedure that involves the making by the applicant of a bid specifying an amount that he is willing to pay to OFCOM in respect of the licence.
- (2) The regulations may make provision with respect to--
  - (a) the grant of the licences to which they apply; and
  - (b) the terms, provisions and limitations subject to which such licences are granted.
- (3) The regulations may, in particular--
  - (a) require the applicant's bid to specify the amount 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 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 sub-paragraphs (i) to (iii) that is authorised by the regulations;
  - (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) any one of the ways falling within sub-paragraphs (i) to (iii) that is authorised by the regulations;
  - (d) specify requirements (for example, technical or financial requirements, requirements relating to fitness to hold the licence and requirements intended to restrict the holding of two or more wireless telegraphy licences by any one person) which must be met by applicants for a licence;
  - (e) require an applicant to pay a deposit to OFCOM;

- (f) specify circumstances in which 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 procedure provided for in the regulations) in deciding whether, or to whom, to grant a licence;
- (h) specify the other terms, provisions and limitations subject to which a licence to which the regulations apply is to be granted (but this is subject to subsection (3A));
- (i) make any provision referred to in section 12(3).

(3A) If a provision of sections 8B, 9(1A) or 9ZA would prevent OFCOM from specifying a term, provision or limitation on the grant of a wireless telegraphy licence, regulations may not specify the term, provision or limitation.

(3B) OFCOM must satisfy themselves, in making regulations specifying criteria to be taken into account in deciding whether, or to whom, to grant a licence, that the criteria are—

- (a) objectively justifiable in relation to the frequencies or uses to which they relate,
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons,
- (c) proportionate to what they are intended to achieve, and
- (d) in relation to what they are intended to achieve, transparent.

(4) Regulations do not require OFCOM to grant a wireless telegraphy 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) A wireless telegraphy licence granted in accordance with the regulations must specify--
- (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 must, subject to subsection (5A), be paid to OFCOM by the person to whom the licence is granted in accordance with the terms of the licence.

(5A) The regulations may, with the consent of the Secretary of State, make provision permitting or requiring a surrendered-spectrum licence to which the regulations apply to include--

- (a) provision requiring all or part of a sum that would otherwise be payable to OFCOM under subsection (5) to be paid to a person who was or is the holder of a predecessor licence;
- (b) provision requiring a sum in addition to that payable to OFCOM under subsection (5) to be paid to such a person;
- (c) provision specifying any such sum or part or the method for determining it.

(6) 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.

- (7) The regulations may provide that where a person--
- (a) applies for a licence in accordance with a procedure provided for in the regulations, but
  - (b) subsequently refuses the licence applied for,

that person must make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the licence.

(8) Section 12(4) applies in relation to sums that will or may become payable under regulations under this section after the grant of a wireless telegraphy licence as it applies in relation to sums that will or may become payable under regulations under section 12.

(9) In subsection (5A) "surrendered-spectrum licence" and "predecessor licence" have the meaning given by section 12(8) and (9).

## **15 Recovery**

(1) This section applies in the case of a sum which is to be paid to OFCOM--

- (a) under any provision of sections 12 to 14;
- (b) in pursuance of any provision of any regulations under those sections; or
- (c) because of any terms contained as a result of those sections in a wireless telegraphy licence.

(2) The sum must be paid to OFCOM as soon as it becomes due in accordance with that provision or those terms and, if it is not paid, it is to be recoverable by them accordingly.

## **16 Regulations**

(1) In its application to the powers of OFCOM to make regulations under sections 12 to 14, section 122 is subject to the following provisions of this section.

(2) Subsections (4) to (6) of section 122 do not apply in any case in which it appears to OFCOM that by reason of the urgency of the matter it is inexpedient to publish a notice in accordance with section 122(4)(b).

(3) Subsections (4) to (6) of section 122 do not apply in the case of any regulations under section 14 modifying previous regulations under section 14 in a case not falling within subsection (2) of this section, if it appears to OFCOM--

- (a) that the modifications would not adversely affect the interests of any person or otherwise put him in a worse position or, as regards someone else, put him at a disadvantage; and
- (b) in so far as the modifications affect a procedure that has already begun, that no person would have acted differently had the modifications come into force before the procedure began.

## **17 Sections 12 to 16: interpretation**

References in sections 12 to 16 to the grant of a wireless telegraphy licence include references to the grant of a licence by way of renewal of a previous licence.

## **Chapter 2 Grants of Recognised Spectrum Access**

### ***Making of grants***

## **18 Grant of recognised spectrum access**

(1) This section applies where--

- (a) a person is proposing to use or to continue to use a wireless telegraphy station or wireless telegraphy apparatus;
  - (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 electromagnetic energy with a view to the reception of anything at places in the United Kingdom or in UK territorial sea.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) A grant of recognised spectrum access to a person is made by giving him a notification containing the grant.
- (6) 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.
- (7) 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 of the Communications Act 2003 (c 21) (power of OFCOM to set conditions in relation to electronic communications networks and services).
- (8) 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.

## 19 Procedure

Schedule 2 (which makes provision about the making, revocation and modification of grants of recognised spectrum access) has effect.

## 20 Effect of grant of recognised spectrum access

- (1) This section applies to--
- (a) OFCOM's functions under sections 8 and 9 with respect to the granting of wireless telegraphy licences;
  - (b) their functions under section 18 with respect to the making of grants of recognised spectrum access; and
  - (c) any of their other radio spectrum functions 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 in force.

- (2) In carrying out those functions, OFCOM must take into account--
- (a) the existence of any grant of recognised spectrum access that is in force, and
  - (b) the provisions imposing the restrictions and conditions subject to which such a 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.

### ***Charges etc***

#### **21 Charges for grant of recognised spectrum access**

- (1) A person to whom a grant of recognised spectrum access is made must pay to OFCOM--
- (a) on the making of the grant, and
  - (b) if regulations made by OFCOM so provide, subsequently at such times during its term and such times in respect of its modification or revocation as may be prescribed by the regulations,

the sums described in subsection (2).

- (2) The sums are--
- (a) such sums as OFCOM may prescribe by regulations, or
  - (b) if regulations made by OFCOM so provide, such sums (whether on the making of the grant or subsequently) as OFCOM may determine in the particular case.
- (3) Regulations under this section may--
- (a) confer exemptions from provisions of the regulations in particular cases; and
  - (b) provide for sums paid to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as OFCOM think fit.

(4) On the making of a grant of recognised spectrum access in respect of which sums will or may subsequently become payable under regulations under this section, OFCOM may require such security to be given, by way of deposit or otherwise, for the payment of those sums as they think fit.

(5) Regulations under this section do not apply in relation to a grant of recognised spectrum access made in accordance with regulations under section 23.

#### **22 Matters taken into account**

(1) This section applies where OFCOM exercise a power under section 21 to prescribe sums payable in respect of grants of recognised spectrum access, other than a power to prescribe sums payable where a grant is modified or revoked at the request or with the consent of the holder of the grant.

(2) OFCOM may, if they think fit in the light (in particular) of the matters to which they must have regard under section 3, prescribe sums greater than those necessary to recover costs incurred by them in connection with their radio spectrum functions.

(3) "Prescribe" means prescribe by regulations or determine in accordance with regulations.

## 23 Bidding for grants

- (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 that involves the making by the applicant of a bid specifying an amount that he is willing to pay to OFCOM in respect of the grant.
- (2) The regulations may make provision with respect to--
- (a) the grants to which they apply; and
  - (b) 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 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 sub-paragraphs (i) to (iii) that is authorised by the regulations;
  - (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) any one of the ways falling within sub-paragraphs (i) to (iii) that is authorised by the regulations;
  - (d) specify requirements (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 an applicant to pay a deposit to OFCOM;
  - (f) specify circumstances in which 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 procedure provided for in the regulations) 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;
  - (i) make any provision referred to in section 21(3).

(4) Regulations do not require OFCOM to make a grant of recognised spectrum access 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 the regulations must specify--

- (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 must be paid to OFCOM by the person to whom the grant is made in accordance with the terms 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) The regulations may provide that where a person--

- (a) applies for a grant of recognised spectrum access in accordance with a procedure provided for in the regulations, but
- (b) subsequently refuses the grant applied for,

that person must make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the grant.

(8) Section 21(4) applies in relation to sums that will or may become payable under regulations under this section after the making of a grant of recognised spectrum access as it applies in relation to sums that will or may become payable under regulations under section 21.

## **24 Recovery**

(1) This section applies in the case of a sum which is to be paid to OFCOM--

- (a) under any provision of sections 21 to 23;
- (b) in pursuance of any provision of any regulations under those sections; or
- (c) because of any conditions contained as a result of those sections in a grant of recognised spectrum access.

(2) The sum must be paid to OFCOM as soon as it becomes due in accordance with that provision or those conditions and, if it is not paid, it is to be recoverable by them accordingly.

## **25 Regulations**

(1) In its application to the powers of OFCOM to make regulations under sections 21 to 23, section 122 is subject to the following provisions of this section.

(2) Subsections (4) to (6) of section 122 do not apply in any case in which it appears to OFCOM that by reason of the urgency of the matter it is inexpedient to publish a notice in accordance with section 122(4)(b).

(3) Subsections (4) to (6) of section 122 do not apply in the case of any regulations under section 23 modifying previous regulations under section 23 in a case not falling within subsection (2) of this section, if it appears to OFCOM--

- (a) that the modifications would not adversely affect the interests of any person or otherwise put him in a worse position or, as regards someone else, put him at a disadvantage; and
- (b) in so far as the modifications affect a procedure that has already begun, that no person would have acted differently had the modifications come into force before the procedure began.

## **26 Sections 21 to 25: interpretation**

References in sections 21 to 25 to the making of a grant of recognised spectrum access include references to the making of a grant by way of renewal of a previous grant.

### **Chapter 3 Management of Radio Spectrum**

#### ***General***

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

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.

## **28 Payments 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 wireless telegraphy station;
- (b) the installation and use, by or on behalf of the Crown, of wireless telegraphy apparatus;
- (c) any grant of recognised spectrum access made to the Crown.

(2) The payments made under this section are to be made--

- (a) at such times, and
- (b) so far as made in relation to use, in relation to such periods,

as the Secretary of State considers appropriate.

## **29 Limitations on authorised spectrum use**

- (1) If they consider it appropriate to impose limitations on the use of particular frequencies for the purpose of securing the efficient use of the electromagnetic spectrum, 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 recognised spectrum access made.
- (4) OFCOM must satisfy themselves that any criteria set out as a result 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) OFCOM must exercise--
  - (a) their powers under Chapter 1 of this Part with respect to wireless telegraphy licences, and
  - (b) their powers under Chapter 2 of this Part with respect to grants of recognised spectrum access,

in accordance with the orders for the time being in force under this section.

- (6) OFCOM must keep under review any order for the time being in force under this section.
- (7) OFCOM must 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 electromagnetic 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.

### **30 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,
 of rights and obligations arising as a result of such a licence or grant.

(1A) Where the European Commission identifies a frequency under article 9b(3) of Directive 2002/21/EC of the European Parliament and of the Council, OFCOM must ensure that regulations under subsection (1) authorise the transfer of a licence or grant relating to that frequency.

(2) The transfers that may be so authorised are--

- (a) transfers of all or any of the rights and obligations under a licence or grant such 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) transfers of all or any of those rights and obligations such 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 paragraphs (a) and (b) 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 a grant of recognised spectrum access, as rights and obligations under a wireless telegraphy licence.

(3) Regulations authorising the transfer of rights and obligations under a wireless telegraphy licence or a grant of recognised spectrum access may--

- (a) authorise a partial transfer--
  - (i) to be made by reference to such factors and apportionments, and
  - (ii) to have effect in relation to such matters and periods,

as may be described in, or determined in accordance with, the regulations;

(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 wireless telegraphy licence or grant of recognised spectrum access and the grant or making of a new one in respect of the transfer, or in any other way;

(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--

- (i) in respect of determinations made by OFCOM for the purposes of the regulations, or
- (ii) 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, of a kind specified in the regulations, as to the procedure to be followed for a transfer and, in particular, as to the notification about a transfer falling within subsection (2)(b) that

~~must be given to OFCOM, both in advance of its being made and afterwards 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;

(k) set out the matters to be taken into account in the making of determinations under regulations under this section.

(3A) Regulations must make provision as to the notification about a transfer falling within subsection (2)(a) which is to be given to OFCOM and published, both in advance of the transfer being made and afterwards.

(4) The transfer of rights and obligations under a wireless telegraphy licence or grant of recognised spectrum access is void except to the extent that it is made--

- (a) in accordance with regulations under this section; or
- (b) in accordance with a provision falling within subsection (5).

(5) The provision is one which--

- (a) is contained in a wireless telegraphy licence ~~granted before 29th December 2003 or in the first or any subsequent renewal on or after that date 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 is also void if it is made in contravention of a direction given by OFCOM in exercise of a power conferred by regulations under this section.

### ***Wireless telegraphy register***

#### **31 Wireless telegraphy register**

(1) OFCOM may by regulations make provision for the establishment and maintenance of a register of relevant information.

(2) OFCOM may 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 grant, 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) is to be open to inspection by the public.

### ***Statistical information***

## 32 Statistical information

- (1) OFCOM may require a person who is using or has established, installed or used a wireless telegraphy station or wireless telegraphy apparatus 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) Subsection (1) has effect subject to the following provisions of this section.
- (3) OFCOM may not require the provision of information under this section except--
- (a) by a demand for information that sets out OFCOM's reasons for requiring the information and the statistical purposes for which it is required; and
  - (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.
- (4) A demand for information required under this section must be contained in a notice given to the person from whom the information is required.
- (5) A person required to give information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

### 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 is one that has been or is being contravened;
- (d) the term, provision or limitation in question relates to the effective and efficient use of frequencies;  
or
- (e) the term, provision or limitation in question relates to sums payable to Ofcom in respect of a wireless telegraphy licence.

(3) OFCOM are not to require the provision of information except—

- (a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and
- (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

(4) A demand for information must be contained in a notice served on the person from whom the information is required.

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

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

(2) A notification under this section is one which—

- (a) sets out the determination made by OFCOM;
- (b) specifies the requirement and contravention in respect of which the determination has been made;
- (c) specifies the period during which the person notified has an opportunity to make representations;
- (d) specifies information to be provided by the person to OFCOM; and
- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 32D.

(3) A notification under this section—

- (a) may be given in respect of more than one contravention; and
- (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(4) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if—

- (a) the contravention is one occurring after the time of the giving of the earlier notification;
- (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or

(c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

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

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

(2) OFCOM may specify a penalty only if no proceedings for an offence under section 33 have been brought against the person in respect of the contravention.

(3) Where a notification under section 32C relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(4) Where such a 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—

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

(7) The amount of any other penalty imposed 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.
- (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.

### **33 Failure to provide information etc**

- (1) A person commits an offence if he fails to provide information in accordance with a requirement of OFCOM under section 32 or 32A.
- (2) In proceedings against a person for an offence under subsection (1) it is a defence for the 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.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to ~~a fine not exceeding level 3 on the standard scale.~~
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (4) A person commits an offence if--
- (a) in pursuance of a requirement under section 32 or 32A, he provides information that is false in any material particular; and
  - (b) at the time he provides it, he knows it to be false or is reckless as to whether or not it is false.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction to ~~a fine not exceeding level 5 on the standard scale.~~

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(6) Proceedings for an offence under this section may be brought in respect of a contravention by a person of a requirement imposed under section 32A only if OFCOM have not imposed a financial penalty under sections 32C and 32E in respect of that contravention.

### **34 Statement of policy**

- (1) OFCOM must prepare and publish a statement of their general policy with respect to--
  - (a) the exercise of their powers under sections s 32 and 32A; 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 a statement under this section (or revise it), they must publish the statement (or the revised statement) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.
- (4) OFCOM must, in exercising their powers under sections s 32 and 33A, have regard to the statement for the time being in force under this section.

## **Chapter 4 Enforcement**

### ***Unauthorised use etc***

### **35 Unauthorised use etc of wireless telegraphy station or apparatus**

- (1) A person commits an offence if he contravenes section 8.
- (2) A person who commits an offence under this section consisting in the establishment or use of a wireless telegraphy station, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast is liable--
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) In the application of subsection (2) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (4) A person who commits an offence under this section consisting in the installation or use of receiving apparatus is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A person who commits an offence under this section other than one falling within subsection (2) or (4) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both.

(6) In the application of subsection (5) to Scotland or Northern Ireland the reference to 51 weeks is to be read as a reference to six months.

(7) In this section "broadcast" has the same meaning as in Part 5.

### **36 Keeping available for unauthorised use**

(1) A person who has a wireless telegraphy station or wireless telegraphy apparatus in his possession or under his control commits an offence if--

- (a) he intends to use it in contravention of section 8; or
- (b) he knows, or has reasonable cause to believe, that another person intends to use it in contravention of that section.

(2) A person who commits an offence under this section where the relevant contravention of section 8 would constitute an offence to which section 35(2) applies is liable--

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(3) In the application of subsection (2) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.

(4) A person who commits an offence under this section in relation to receiving apparatus is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A person who commits an offence under this section other than one falling within subsection (2) or (4) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both.

(6) In the application of subsection (5) to Scotland or Northern Ireland the reference to 51 weeks is to be read as a reference to six months.

### **37 Allowing premises to be used for unlawful broadcasting**

(1) A person who is in charge of premises that are used for unlawful broadcasting commits an offence if--

- (a) he knowingly causes or permits the premises to be so used; or
- (b) he has reasonable cause to believe that the premises are being so used but fails to take such steps as are reasonable in the circumstances of the case to prevent them from being so used.

(2) A person who commits an offence under this section is liable--

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

- (3) In the application of subsection (2) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (4) For the purposes of this section a person is in charge of premises if--
- (a) he is the owner or occupier of the premises; or
  - (b) he has, or acts or assists in, the management or control of the premises.
- (5) For the purposes of this section premises are used for unlawful broadcasting if they are used--
- (a) for making an unlawful broadcast; or
  - (b) for sending signals for the operation or control of apparatus used for the purpose of making an unlawful broadcast from another place.
- (6) For the purposes of this section a broadcast is unlawful if--
- (a) it is made by means of the use of a wireless telegraphy station or wireless telegraphy apparatus in contravention of section 8; or
  - (b) the making of the broadcast contravenes a provision of Part 5.
- (7) In this section--
- "broadcast" has the same meaning as in Part 5;
- "premises" includes any place and, in particular, includes--
- (a) a vehicle, ship or aircraft; and
  - (b) a structure or other object (whether movable or not, and whether on land or not).

### **38 Facilitating unauthorised broadcasting**

- (1) This section applies in the case of a broadcasting station from which unauthorised broadcasts are made.
- (2) A person commits an offence if--
- (a) he participates in the management, financing, operation or day-to-day running of the broadcasting station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
  - (b) he supplies, instals, repairs or maintains wireless telegraphy apparatus or any other item knowing, or having reasonable cause to believe--
    - (i) that the apparatus or other item is to be, or is, used for the purpose of facilitating the operation or day-to-day running of the broadcasting station, and
    - (ii) that unauthorised broadcasts are made by the station;
  - (c) he renders any other service to a person knowing, or having reasonable cause to believe--
    - (i) that the rendering of the service to the person will facilitate the operation or day-to-day running of the broadcasting station, and
    - (ii) that unauthorised broadcasts are made by the station;

- (d) he supplies a film or sound recording knowing, or having reasonable cause to believe, that an unauthorised broadcast of it is to be made by the broadcasting station;
  - (e) he makes a literary, dramatic or musical work knowing, or having reasonable cause to believe, that an unauthorised broadcast of it is to be made by the broadcasting station;
  - (f) he makes an artistic work knowing, or having reasonable cause to believe, that an unauthorised broadcast including that work is to be made by the broadcasting station;
  - (g) he participates in an unauthorised broadcast made by the broadcasting station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
  - (h) he advertises, or invites another to advertise, by means of an unauthorised broadcast made by the broadcasting station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
  - (i) he publishes the times or other details of unauthorised broadcasts made by the broadcasting station, or (otherwise than by publishing such details) publishes an advertisement of matter calculated to promote the station (whether directly or indirectly), knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station.
- (3) For the purposes of this section a person participates in a broadcast only if he is actually present--
- (a) as an announcer;
  - (b) as a performer or one of the performers concerned in an entertainment given; or
  - (c) as the deliverer of a speech.
- (4) The cases in which a person is to be taken for the purposes of this section as advertising by means of a broadcast include any case in which he causes or allows it to be stated, suggested or implied that entertainment included in the broadcast--
- (a) has been supplied by him; or
  - (b) is provided wholly or partly at his expense.
- (5) In proceedings for an offence under this section consisting in supplying a thing or rendering a service, it is a defence for the defendant to prove that he was obliged, under or by virtue of any enactment, to supply the thing or render the service.
- (6) A person who commits an offence under this section is liable--
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) In the application of subsection (6) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (8) In this section--
- "broadcast" has the same meaning as in Part 5;
  - "broadcasting station" means a business or other operation (whether or not in the nature of a commercial venture) that is engaged in the making of broadcasts;
  - "unauthorised broadcast" means a broadcast made by means of the use of a wireless telegraphy station or wireless telegraphy apparatus in contravention of section 8.

### *Procedures for contraventions*

#### **39 Contravention of terms, etc**

(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 section 8(3),

they may give that person a notification under this section.

(2) A notification under this section--

- (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)~~ making representations.

~~(3) The 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 [(8)], the period for doing these 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--~~

- ~~(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 has a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.~~

~~(7) The person notified also has 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.~~

~~[(8) The person notified also has a shorter period if--~~

- ~~(a) OFCOM have reasonable grounds for believing that that person is contravening, or has contravened, a notice given under section 9A or a term or provision as mentioned in section 9(4)(e);~~
- ~~(b) OFCOM have determined, taking into account all relevant circumstances, that a shorter period would be appropriate; and~~
- ~~(c) the shorter period has been specified in the notification.]~~

#### **40 Repeated contravention**

~~(1) For the purposes of section 39 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 wireless telegraphy 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 under section 8(3), it falls within subsection (4) or (5).~~

~~(2) A contravention of a term, provision or limitation of a wireless telegraphy licence falls within this subsection if—~~

~~(a) a previous notification under section 39 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 12 months after the day of the giving of the previous notification.~~

~~(3) A contravention of a term, provision or limitation of a wireless telegraphy licence falls within this subsection if—~~

~~(a) the person concerned has been convicted of an offence under section 35 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 12 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 39 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 12 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 35 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 12 months from the contravention in respect of which that person was convicted of that offence.~~

~~(6) In calculating the periods of 12 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 is to be left out of account.~~

~~(7) For the purposes of subsection (6) criminal proceedings are 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 to remedying a contravention include references to--~~

~~(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;~~

~~(d) otherwise acting in a manner that constitutes an acknowledgement that the notified contravention did occur.~~

~~(9) References to a contravention of a term, provision or limitation of a wireless telegraphy licence include references 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.~~

## **41 Procedure for prosecutions**

(1) This section applies to proceedings against a person ("the defendant") for an offence under section 35 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 section 8(3).

(2) Proceedings to which this section applies are not to be brought unless, before they are brought, OFCOM have--

- (a) given the defendant a notification under section 39 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 against a person in respect of a contravention if--

- (a) it is a contravention to which a notification given to that person under section 39 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 39 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 wireless telegraphy stations or wireless telegraphy apparatus; ~~or~~
  - (ii) are communications providers or make associated facilities available; or
  - (iii) are other users of the radio spectrum.

(5) Where--

- (a) proceedings to which this section applies are as a result of subsection (4) brought without a notification having been given to the defendant, and
- (b) the defendant is convicted in those proceedings of the offence under section 35,

the court, in determining how to deal with that person, must have regard, in particular, to the matters specified in subsection (6).

(6) The 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) Where--

- (a) OFCOM give a notification under section 39 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 39(3).

(8) Subsection (7) has effect notwithstanding anything in--

- (a) section 127 of the Magistrates' Courts Act 1980 (c 43) (limitation on time for bringing summary proceedings), or
- (b) Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26)) (equivalent provision for Northern Ireland).

## **42 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 9(4)(b) or (c);

- (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 this Chapter have been brought against that person.
- (2) Where OFCOM impose a penalty on a person under this section, they must--
- (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.
- (4) No proceedings for an offence under this Chapter may 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) 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 as a result 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 Broadcasting Act 1996 (c 55) in force in respect of a multiplex service to be broadcast using that station or apparatus.
- (6) "Multiplex service" means--
- (a) a service for broadcasting for general reception consisting 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.

### **43 Amount of penalty under section 42**

- (1) The amount of a penalty imposed under section 42 is to be such amount as OFCOM think fit.
- (2) But the amount of the penalty may not exceed the greater of--
  - (a) £250,000; and
  - (b) 5 per cent of the relevant amount of gross revenue.
- (3) In subsection (2) "the relevant amount of gross revenue" means the amount specified in section 44.
- (4) 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 (2)(a).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

#### **43A Special procedure for contraventions of certain provisions**

- (1) OFCOM may impose a penalty on a person if--
  - (a) that person is or has been in contravention in any respect of a provision, term or limitation of a wireless telegraphy licence;
  - (b) OFCOM have notified that person that it appears to them that the provision, term or limitation has been contravened in that respect;
  - (c) this section applies to that contravention by virtue of provision included in the licence; and
  - (d) that contravention is not one in respect of which proceedings for an offence under this Chapter have been brought against that person.
  
- (2) A licence may provide in accordance with subsection (1)(c) that this section applies to the contravention of a provision, term or limitation only if it appears to OFCOM that a direction under section 5 requires the provision, term or limitation to be included in the licence.
  
- (3) Where OFCOM impose a penalty on a person under this section, they must--
  - (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.
  
- (4) 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.
  
- (5) No proceedings for an offence under this Chapter may be commenced against a person in respect of a contravention in respect of which a penalty has been imposed by OFCOM under this section.
  
- (6) The amount of a penalty imposed under this section is to be such amount not exceeding 10 per cent of the relevant amount of gross revenue as OFCOM think--
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.

#### **44 Relevant amount of gross revenue**

- (1) The relevant amount of gross revenue for the purposes of section 43 or 43A, 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 12 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 revenue.
  
- (2) The accounting period or periods referred to in subsection (1) are--

- (a) every accounting period of his to end within the period of 12 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) 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,

is to 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) Sections 32 and 33 are to apply for the purpose of ascertaining the amount of a person's gross revenue for any period for the purposes of section 43 or 43A and this section as they apply for the purpose of obtaining information for statistical purposes about matters relating to the establishment, installation or use by that person of a wireless telegraphy station or wireless telegraphy 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 12 month period;

"gross revenue", in relation to a person, means the gross revenue of an undertaking carried on by that person.

## **Chapter 5 Miscellaneous**

### ***Regulations about wireless telegraphy***

## 45 Regulations

- (1) OFCOM may make regulations prescribing the things that are to be done, or not done, in connection with the use of a wireless telegraphy station or wireless telegraphy apparatus.
- (2) Regulations under subsection (1) may, in particular, require the use of a wireless telegraphy station or wireless telegraphy apparatus to cease on the demand of such persons as may be prescribed by or under the regulations.
- (3) OFCOM may make regulations imposing on a person--
  - (a) to whom a wireless telegraphy licence relating to a wireless telegraphy station or wireless telegraphy apparatus is granted, or
  - (b) who is in possession or control of such a station or such apparatus,

the obligations mentioned in subsection (4).
- (4) The obligations are--
  - (a) obligations as to permitting and facilitating the inspection of the station or apparatus;
  - (b) obligations as to the condition in which the station or apparatus is to be kept;
  - (c) in the case of a station or apparatus for the establishment, installation or use of which a wireless telegraphy licence is necessary, obligations as to the production of the licence, or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations.
- (5) OFCOM may make regulations requiring the holder of a wireless telegraphy licence in respect of which sums are or may become due after the grant of the licence, or after its renewal, to keep and produce such accounts and records as may be specified in the regulations.
- (6) OFCOM may make regulations requiring the holder of a wireless telegraphy licence authorising the establishment or use of a wireless telegraphy station to exhibit at the station such notices as may be specified in the regulations.
- (7) Regulations under this section have effect subject to regulations under section 14.
- (8) Nothing in regulations under this section requires a person to concede any form of right of entry into a private dwelling-house for the purpose of permitting or facilitating the inspection of receiving apparatus.
- (9) The approval of the Secretary of State is required for the making by OFCOM of regulations under this section.
- (10) A statutory instrument containing regulations made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## 46 Offences

- (1) A person commits an offence if--
  - (a) he contravenes regulations made under section 45; or
  - (b) he causes or permits a wireless telegraphy station or wireless telegraphy apparatus to be used in contravention of regulations made under that section.

(2) A person who commits an offence under this section consisting in a contravention, in relation to receiving apparatus, of regulations made under section 45 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person who commits an offence under this section other than one falling within subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### ***Misuse of wireless telegraphy***

#### **47 Misleading messages**

(1) A person commits an offence if, by means of wireless telegraphy, he sends or attempts to send a message to which this section applies.

(2) This section applies to a message which, to the person's knowledge--

(a) is false or misleading; and

(b) is likely to prejudice the efficiency of a safety of life service or to endanger the safety of a person or of a ship, aircraft or vehicle.

(3) This section applies in particular to a message which, to the person's knowledge, falsely suggests that a ship or aircraft--

(a) is in distress or in need of assistance; or

(b) is not in distress or not in need of assistance.

(4) A person who commits an offence under this section is liable--

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) In the application of subsection (4) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.

#### **48 Interception and disclosure of messages**

(1) A person commits an offence if, otherwise than under the authority of a designated person--

(a) he uses wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of a message (whether sent by means of wireless telegraphy or not) of which neither he nor a person on whose behalf he is acting is an intended recipient, or

(b) he discloses information as to the contents, sender or addressee of such a message.

(2) A person commits an offence under this section consisting in the disclosure of information only if the information disclosed by him is information that would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person.

- (3) A person does not commit an offence under this section consisting in the disclosure of information if he discloses the information in the course of legal proceedings or for the purpose of a report of legal proceedings.
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) "Designated person" means--
- (a) the Secretary of State;
  - (b) the Commissioners for Her Majesty's Revenue and Customs; or
  - (c) any other person designated for the purposes of this section by regulations made by the Secretary of State.

#### 49 Interception authorities

- (1) The conduct in relation to which a designated person may give an interception authority is not to include conduct falling within subsection (2), except where he believes that the conduct is necessary on grounds falling within subsection (5).
- (2) Conduct falls within this subsection if it is--
- (a) conduct that, if engaged in without lawful authority, constitutes an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000 (c 23);
  - (b) conduct that, if engaged in without lawful authority, is actionable under section 1(3) of that Act;
  - (c) conduct that is capable of being authorised by an authorisation or notice granted under Chapter 2 of Part 1 of that Act (communications data); or
  - (d) conduct that is capable of being authorised by an authorisation granted under Part 2 of that Act (surveillance etc).
- (3) A designated person may not exercise his power to give an interception authority except where he believes--
- (a) that the giving of his authority is necessary on grounds falling within subsection (4) or (5); and
  - (b) that the conduct authorised by him is proportionate to what is sought to be achieved by that conduct.
- (4) An interception authority is necessary on grounds falling within this subsection if it is necessary--
- (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting crime or of preventing disorder;
  - (c) in the interests of the economic well-being of the United Kingdom;
  - (d) in the interests of public safety;
  - (e) for the purpose of protecting public health;
  - (f) for the purpose of assessing or collecting a tax, duty, levy or other imposition, contribution or charge payable to a government department; or
  - (g) for any purpose (not falling within paragraphs (a) to (f)) that is specified for the purposes of this subsection by regulations made by the Secretary of State.

(5) An interception authority is necessary on grounds falling within this subsection if it is not necessary on grounds falling within subsection (4)(a) or (c) to (g) but is necessary for purposes connected with--

- (a) the grant of wireless telegraphy licences;
- (b) the prevention or detection of anything that constitutes interference with wireless telegraphy; or
- (c) the enforcement of--
  - (i) any provision of this Part (other than Chapter 2 and sections 27 to 31) or Part 3, or
  - (ii) any enactment not falling within sub-paragraph (i) that relates to interference with wireless telegraphy.

(6) The matters to be taken into account in considering whether the requirements of subsection (3) are satisfied in the case of the giving of an interception authority include whether what it is thought necessary to achieve by the authorised conduct could reasonably be achieved by other means.

(7) An interception authority must be in writing and under the hand of--

- (a) the Secretary of State;
- (b) one of the Commissioners for Her Majesty's Revenue and Customs; or
- (c) a person not falling within paragraph (a) or (b) who is designated for the purposes of this subsection by regulations made by the Secretary of State.

(8) An interception authority may be general or specific and may be given--

- (a) to such person or persons, or description of persons,
- (b) for such period, and
- (c) subject to such restrictions and limitations,

as the designated person thinks fit.

(9) No regulations may be made under subsection (4)(g) unless a draft of them has first been laid before Parliament and approved by a resolution of each House.

(10) For the purposes of this section the question whether a person's conduct is capable of being authorised under Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000 (c 23) or under Part 2 of that Act is to be determined without reference--

- (a) to whether the person is someone upon whom a power or duty is or may be conferred or imposed by or under that Chapter or that Part; or
- (b) to whether there are grounds for believing that the requirements for the grant of an authorisation or the giving of a notice under that Chapter or that Part are satisfied.

(11) References in this section to an interception authority are references to an authority for the purposes of section 48 given otherwise than by way of the issue or renewal of a warrant, authorisation or notice under Part 1 or 2 of the Regulation of Investigatory Powers Act 2000.

(12) In this section--

"crime" has the meaning given by section 81(2)(a) of the Regulation of Investigatory Powers Act 2000 (c 23);

"designated person" has the same meaning as in section 48.

### **Miscellaneous**

#### **50 Apparatus on foreign-registered ships etc**

- (1) The Secretary of State may make regulations for regulating the use, on board a foreign-registered ship or aircraft while it is within the limits of the United Kingdom and UK territorial sea, of wireless telegraphy apparatus on board the ship or aircraft.
- (2) The regulations may provide--
  - (a) for the punishment of persons contravening the regulations by a fine;
  - (b) for the forfeiture of any wireless telegraphy apparatus in respect of which an offence under the regulations is committed.
- (3) The maximum fine for each offence under the regulations is--
  - (a) an amount not exceeding level 5 on the standard scale; or
  - (b) a lesser amount.
- (4) The regulations may make different provision for ships or aircraft registered in different countries.
- (5) Except as provided by this section or in consequence of an Order in Council under section 119(3), nothing in sections 8 to 11, 35 to 38, 45 to 49, 105 and 119 operates so as to impose any prohibition or restriction on persons using wireless telegraphy apparatus on board a foreign-registered ship or aircraft.
- (6) A foreign-registered ship or aircraft is one that--
  - (a) is not registered in the United Kingdom; and
  - (b) is registered in a country other than the United Kingdom, the Isle of Man or any of the Channel Islands.

#### **51 Apparatus in vehicles**

- (1) This section applies to the power of the Secretary of State under section 7(1) of the Vehicle Excise and Registration Act 1994 (c 22) to specify--
  - (a) the declaration to be made, and
  - (b) the particulars to be furnished,

by a person applying for a vehicle licence (within the meaning of that Act).

- (2) The power of the Secretary of State includes power to require that the declaration and particulars extend to any matters relevant for the enforcement of section 8 of this Act in respect of any wireless telegraphy apparatus installed in the vehicle.
- (3) Accordingly, the Secretary of State is not required to issue a vehicle licence under the Vehicle Excise and Registration Act 1994 where the applicant fails to comply with a requirement imposed because of subsection (2).
- (4) A person commits an offence if in providing information that he is required to provide because of subsection (2)--
  - (a) he makes a statement that he knows to be false in a material particular; or
  - (b) he recklessly makes a statement that is false in a material particular.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Where subsection (4) applies, it applies instead of section 45 of the Vehicle Excise and Registration Act 1994 (c 22) (false or misleading declarations and information).

## **52 Wireless personnel**

(1) The Secretary of State may--

- (a) hold examinations to determine the competence of the persons examined to fill positions in connection with the operation of wireless telegraphy stations or wireless telegraphy apparatus;
- (b) issue certificates of competence to persons successful in such examinations.

(2) The certificates of competence are to be of such types as the Secretary of State may from time to time determine.

(3) The Secretary of State may issue written authorities to such persons as he thinks fit authorising them to fill such positions in connection with the operation of wireless telegraphy stations or wireless telegraphy apparatus as may be specified in the authority.

(4) The positions that may be so specified are positions for the holding of which the possession of an authority under subsection (3) is a necessity or a qualification under--

- (a) a wireless telegraphy licence granted under this Act, or
- (b) a licence granted under a corresponding law of a country or territory under the sovereignty of Her Majesty.

(5) If it appears to the Secretary of State that there are sufficient grounds to do so, he may at any time suspend an authority under subsection (3) with a view to its revocation.

(6) Schedule 3 has effect where an authority is suspended under subsection (5).

(7) The Secretary of State may charge such fees, if any, as he may determine--

- (a) to persons applying to take part in an examination under this section;
- (b) to applicants for, or for copies of, a certificate or authority issued under this section.

## **53 Surrender of authority**

(1) Where an authority under section 52(3) has ceased to be in force or has been suspended, it is the duty of--

- (a) the person to whom the authority was issued, and
- (b) any other person in whose possession or under whose control the authority may be,

to cause it to be surrendered to the Secretary of State if required by the Secretary of State to do so.

(2) A person commits an offence if--

- (a) he has a duty under subsection (1) to cause an authority under section 52(3) to be surrendered to the Secretary of State, and

(b) without reasonable excuse he fails or refuses to do so.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### Part 3

#### Regulation of Apparatus

##### *Undue interference*

#### 54 Regulations about use and sale etc of apparatus

(1) OFCOM may make regulations prescribing the requirements to be complied with in the case of apparatus specified in the regulations, if the apparatus is to be used.

(2) OFCOM may make regulations prescribing the requirements to be complied with in the case of apparatus specified in the regulations, if the apparatus is to be--

- (a) sold otherwise than for export,
- (b) offered or advertised for sale otherwise than for export, or
- (c) let on hire, or offered or advertised for letting on hire,

by a person who manufactures, assembles or imports such apparatus in the course of business.

(3) The requirements prescribed under subsection (1) or (2) are to be such requirements as OFCOM think fit for the purpose of ensuring that the use of the apparatus does not cause undue interference with wireless telegraphy.

(4) In particular, the requirements may include--

- (a) requirements as to the maximum intensity of electromagnetic energy of specified frequencies that may be radiated in any direction from the apparatus while it is being used;
- (b) in the case of apparatus the power for which is supplied from electric lines, requirements as to the maximum electromagnetic energy of specified frequencies that may be injected into those lines by the apparatus.

(5) The apparatus which may be specified in the regulations under subsection (1) or (2) is apparatus which generates, or is designed to generate, or is liable to generate fortuitously, electromagnetic energy at frequencies not exceeding 3,000 gigahertz.

(6) In a case where apparatus does not comply with the requirements applicable to it under regulations made under subsection (1) or (2), a person does not act unlawfully only because--

- (a) he uses the apparatus, or
- (b) he sells it, or offers or advertises it for sale, or lets it on hire or offers or advertises it for letting on hire.

But the non-compliance is a ground for the giving of a notice under section 55 or 56.

(7) The approval of the Secretary of State is required for the making by OFCOM of regulations under this section.

(8) A statutory instrument containing regulations made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

### **55 Enforcement: use of apparatus**

(1) This section applies where, in the opinion of OFCOM--

- (a) apparatus does not comply with the requirements applicable to it under regulations made under section 54(1); and
- (b) the first or second condition is satisfied in relation to the apparatus.

(2) The first condition is that the use of the apparatus is likely to cause undue interference with wireless telegraphy used--

- (a) for the purposes of a safety of life service; or
- (b) for a purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend.

(3) The second condition is that--

- (a) the use of the apparatus is likely to cause undue interference with wireless telegraphy other than wireless telegraphy falling within subsection (2);
- (b) the use of the apparatus in fact has caused, or is causing, such interference; and
- (c) the case is one where OFCOM consider that all reasonable steps to minimise interference have been taken in relation to the wireless telegraphy station or wireless telegraphy apparatus receiving the telegraphy interfered with.

(4) OFCOM may give a notice in writing to the person in possession of the apparatus--

- (a) prohibiting the use of the apparatus after a date fixed by the notice, whether by the person to whom the notice is given or otherwise; or
- (b) (if OFCOM think fit so to frame the notice) prohibiting the use of the apparatus after a date fixed by the notice except in such way, at such times and in such circumstances as the notice may specify.

(5) The date fixed by a notice under subsection (4) must be not less than 28 days from the date on which the notice is given.

(6) But if OFCOM are satisfied that the use of the apparatus in question is likely to cause such undue interference as is described in subsection (2), the date fixed by a notice under subsection (4) may be the date on which the notice is given.

(7) A notice under subsection (4) may be revoked or varied by a subsequent notice in writing from OFCOM given to the person who is then in possession of the apparatus.

(8) Where a notice under subsection (7) has the effect of imposing additional restrictions on the use of the apparatus, the provisions of this section about the coming into force of notices apply in relation to the notice as if it were a notice under subsection (4).

### **56 Enforcement: sale etc of apparatus**

(1) This section applies where, in the opinion of OFCOM, apparatus does not comply with the requirements applicable to it under regulations made under section 54(2).

(2) OFCOM may give a notice in writing to the person who, in the course of business, has manufactured, assembled or imported the apparatus, prohibiting him from--

- (a) selling the apparatus otherwise than for export;
- (b) offering or advertising it for sale otherwise than for export; or
- (c) letting it on hire, or offering or advertising it for letting on hire.

### **57 Appeal against notice under section 55 or 56 etc**

(1) Where an appeal with respect to a notice under section 55 (or section 56) is pending--

- (a) proceedings for an offence under section 58(1) (or section 58(4)) relating to that notice, whether instituted before or after the bringing of the appeal, are to be stayed until the appeal has been finally determined; and
- (b) the proceedings are to be discharged if the notice is set aside in consequence of the appeal.

(2) But subsection (1) does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(3) For the purposes of this section an appeal under section 192 of the Communications Act 2003 (c 21) with respect to a notice under section 55 (or section 56) 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.

(4) No proceedings for an offence under section 58(1) (or section 58(4)) relating to a notice under section 55 (or section 56) 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.

(5) Proceedings in Scotland for such an offence must be commenced--

- (a) where no appeal has been brought, within six months of the time referred to in subsection (4)(a); and
- (b) where an appeal has been brought and determined, within six months of the date of that determination.

### **58 Contravening notice under section 55 or 56**

(1) A person commits an offence if--

- (a) he uses apparatus, or causes or permits apparatus to be used, knowing that a notice under section 55 is in force with respect to it; and
  - (b) the use of the apparatus contravenes the notice.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction--
- (a) if the offence is one that falls within subsection (6), to a fine not exceeding level 5 on the standard scale;
  - (b) otherwise, to a fine not exceeding level 3 on the standard scale.
- (3) In the application of subsection (2) to Scotland or Northern Ireland, paragraph (a) has effect as if for the words "to a fine not exceeding level 5 on the standard scale" there were substituted "to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both".
- (4) A person commits an offence if he contravenes the provisions of a notice given to him under section 56 (unless the notice has previously been revoked by OFCOM).
- (5) A person who commits an offence under subsection (4) is liable on summary conviction--
- (a) if the offence is one that falls within subsection (6), to a fine not exceeding level 5 on the standard scale;
  - (b) otherwise, to a fine not exceeding level 3 on the standard scale.
- (6) An offence falls within this subsection if it involves or consists in a contravention of a notice under section 55 or 56 in relation to apparatus the use of which is likely to cause undue interference with wireless telegraphy used--
- (a) for the purpose of a safety of life service; or
  - (b) for a purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend.

## **59 Entry and search of premises etc**

- (1) A justice of the peace may issue an authorisation under this section if he is satisfied, on an application supported by sworn evidence, that--
- (a) there is reasonable ground for believing that there is to be found, on specified premises or in a specified ship, aircraft or vehicle, apparatus that does not comply with the requirements applicable to it under regulations made under section 54;
  - (b) it is necessary to enter those premises, or that ship, aircraft or vehicle, for the purpose of obtaining information that will enable OFCOM to decide whether or not to give a notice under section 55 or 56; and
  - (c) within the period of 14 days before the date of the application to the justice, access to the premises, ship, aircraft or vehicle for the purpose of obtaining such information--
    - (i) has been demanded by a person authorised for the purpose by OFCOM, who has produced sufficient documentary evidence of his identity and authority; but
    - (ii) has been refused.
- (2) But the justice may not issue an authorisation unless the first or second condition is fulfilled as regards the application.

(3) The first condition is that it is shown to the justice that OFCOM are satisfied that there is reasonable ground for believing that the use of the apparatus in question is likely to cause undue interference with wireless telegraphy used--

- (a) for the purposes of a safety of life service; or
- (b) for a purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend.

(4) The second condition is that it is shown to the justice that--

- (a) at least seven days before the demand was made, notice that access would be demanded was given to the occupier of the premises or (as the case may be) the person in possession or the person in charge of the ship, aircraft or vehicle;
- (b) the demand for access was made at a reasonable hour; and
- (c) it was unreasonably refused.

(5) An authorisation under this section is an authorisation empowering a person or persons authorised for the purpose by OFCOM, with or without constables--

- (a) to enter the premises or (as the case may be) the ship, aircraft or vehicle and any premises on which it may be;
- (b) to search the premises, ship, aircraft or vehicle with a view to discovering whether apparatus falling within subsection (1)(a) is there;
- (c) if he or they find such apparatus there, to examine and test it with a view to obtaining the information mentioned in subsection (1)(b).

(6) An authorisation under this section must be in writing and signed by the justice.

(7) A person authorised by OFCOM to exercise a power conferred by this section may if necessary use reasonable force in the exercise of the power.

(8) Subsection (7) does not affect any power exercisable by the person apart from that subsection.

(9) Where under this section a person has a right to examine and test apparatus on premises or in a ship, aircraft or vehicle, any person who--

- (a) is on the premises, or
- (b) is in charge of, or in or in attendance on, the ship, aircraft or vehicle,

must give him whatever assistance he may reasonably require in the examination or testing of the apparatus.

(10) A reference in this section to a justice of the peace is to be read--

- (a) in Scotland, as a reference to a sheriff;
- (b) in Northern Ireland, as a reference to a lay magistrate.

## **60 Obstruction and failure to assist**

(1) A person commits an offence if--

- (a) he intentionally obstructs a person in the exercise of the powers conferred on him under section 59; or

(b) he fails or refuses, without reasonable excuse, to give to such a person any assistance which, under that section, he is under a duty to give to him.

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **61 Sections 54 to 60: interpretation**

References in sections 54 to 60 to apparatus include references to any form of electric line.

### ***Restriction orders***

## **62 Restriction orders**

(1) This section applies to wireless telegraphy apparatus and to apparatus designed or adapted for use in connection with wireless telegraphy apparatus.

(2) Where it appears to OFCOM to be expedient to do so for the purpose of preventing or reducing the risk of interference with wireless telegraphy, they may make an order (a "restriction order") imposing restrictions in relation to apparatus to which this section applies of a class or description specified in the order.

(3) The restrictions may relate to the following actions--

- (a) the manufacture of apparatus (whether or not for sale);
- (b) selling apparatus or offering it for sale;
- (c) letting apparatus on hire or offering to let it on hire;
- (d) indicating (whether by displaying apparatus or by any form of advertisement) willingness to sell apparatus or to let it on hire;
- (e) having custody or control of apparatus;
- (f) the importation of apparatus.

(4) A restriction order must specify, in the case of apparatus of any class or description specified in the order, what actions are restricted by it.

(5) An action for the time being restricted by a restriction order is prohibited by this section unless--

- (a) an authority given by OFCOM relates to it; and
- (b) it complies with any terms and conditions that OFCOM attach to the authority.

(6) The approval of the Secretary of State is required for the making by OFCOM of an order under this section.

(7) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **63 Authorities**

(1) An authority given by OFCOM under section 62(5) in the case of apparatus of a class or description specified in a restriction order may be limited--

- (a) to such of the actions restricted by the order as may be specified in the authority;
- (b) to such subsidiary class or description of apparatus, falling within the class or description specified in the order, as may be specified in the authority.

(2) Terms or conditions attached by OFCOM to an authority under section 62(5) for the manufacture or importation of apparatus may relate to a period after, as well as to the time of, or a period before, the manufacture or importation.

(3) An authority under section 62(5) may be given, and terms or conditions may be attached to it--

- (a) generally by means of a notice published in the London, Edinburgh and Belfast Gazettes; or
- (b) by an instrument in writing issued to each person authorised to do, in relation to apparatus of a class or description to which a restriction order relates, any action for the time being restricted by the order.

#### **64 Compatibility with international obligations**

(1) OFCOM may not--

- (a) make a restriction order,
- (b) give an authority under section 62(5), or
- (c) attach a term or condition to such an authority,

unless they are satisfied that the order, authority, term or condition is compatible with the international obligations of the United Kingdom.

(2) Where--

- (a) a statutory instrument containing a restriction order, or
- (b) a notice or instrument in writing giving an authority under section 62(5), or attaching a term or condition to such an authority,

contains a statement that OFCOM are satisfied as mentioned in subsection (1), the statement is evidence of that fact (and, in Scotland, sufficient evidence of it).

#### **65 Powers of Commissioners for Her Majesty's Revenue and Customs**

(1) This section applies where the importation of apparatus of a particular class or description is for the time being restricted by a restriction order.

(2) An officer of Revenue and Customs may require a person with custody or control of apparatus of that class or description which is being or has been imported to provide proof that the importation of the apparatus is or was not unlawful by virtue of section 62.

(3) If the proof required under subsection (2) is not provided to the satisfaction of the Commissioners for Her Majesty's Revenue and Customs, the apparatus is to be treated, unless the contrary is proved, as being prohibited goods, within the meaning of the Customs and Excise Management Act 1979 (c 2), and is liable to forfeiture under that Act.

## 66 Offences

- (1) A person commits an offence if--
- (a) he takes any action falling within section 62(3)(a) to (d) in relation to apparatus in contravention of section 62(5); or
  - (b) without reasonable excuse he has apparatus in his custody or control in contravention of section 62(5).
- (2) A person commits an offence if he contravenes or fails to comply with any terms or conditions attached to an authority given by OFCOM under section 62(5) (whatever the action to which the authority relates).
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) This section does not affect any liability to a penalty that may have been incurred under the Customs and Excise Management Act 1979 (c 2).

## 67 Restriction orders: interpretation

In sections 62 to 66--

"manufacture" includes construction by any method and the assembly of component parts;

"restriction order" has the meaning given by section 62.

### *Deliberate interference*

## 68 Deliberate interference

- (1) A person commits an offence if he uses apparatus for the purpose of interfering with wireless telegraphy.
- (2) This section applies--
- (a) whether or not the apparatus in question is wireless telegraphy apparatus;
  - (b) whether or not it is apparatus specified in regulations under section 54;
  - (c) whether or not a notice under section 55 or 56 has been given with respect to it, or, if given, has been varied or revoked.
- (3) A person who commits an offence under this section is liable--
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) In the application of subsection (3) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.

## Part 4

### Approval of Apparatus etc

#### *Approval of apparatus*

#### **69 Approval of apparatus**

(1) This section applies where an instrument falling within subsection (2) contains provision framed by reference to relevant apparatus for the time being approved under this section for the purposes of that instrument.

(2) The instruments are--

- (a) wireless telegraphy licences granted under section 8;
- (b) regulations made under section 8(3);
- (c) regulations made under section 54;
- (d) restriction orders made under section 62;
- (e) authorities given under section 62(5).

(3) The relevant authority may approve relevant apparatus for the purposes of such an instrument.

(4) The relevant authority may require a person applying for an approval under this section to comply with such requirements as the relevant authority may think appropriate; and those requirements may include a requirement to satisfy some other person with respect to a particular matter.

(5) An approval under this section may apply--

- (a) to particular apparatus or to apparatus of a description specified in the approval;
- (b) for the purposes of a particular instrument or for the purposes of instruments that are of a description specified in the approval.

(6) An approval under this section may specify conditions that must be complied with if the approval is to apply to apparatus specified in the approval (or to apparatus of a description so specified) for purposes specified in the approval.

(7) A condition so specified may impose on the person to whom the approval is given a requirement to satisfy a person from time to time with respect to a particular matter.

(8) The relevant authority may at any time vary or withdraw an approval given by the relevant authority under this section.

#### **70 Approvals: supplementary**

(1) A person appointed by the relevant authority may exercise a function conferred on the relevant authority by section 69 to such extent and subject to such conditions as may be specified in the appointment.

(2) The relevant authority may by order provide for the charging of fees in respect of the exercise of a function in pursuance of section 69 by or on behalf of the relevant authority.

- (3) Section 128 of the Finance Act 1990 (c 29) (power to provide for repayment of fees etc) applies in relation to the power under subsection (2) to make an order as it applies in relation to any power to make such an order conferred before that Act was passed.
- (4) An appointment under subsection (1) may authorise the person appointed to retain any fees received by him in pursuance of an order under subsection (2).
- (5) Nothing in subsection (2) precludes a person (not being the relevant authority or a person acting on behalf of the relevant authority) by whom a matter falls to be determined for the purposes of a requirement imposed in pursuance of section 69(4) or (7) from charging a fee in respect of the carrying out of a test or other assessment made by him.
- (6) Any sums received by the Secretary of State under this section shall be paid into the Consolidated Fund.

## **71 The relevant authority**

- (1) In sections 69 and 70 "the relevant authority" means (subject to subsection (2))--
- (a) in such cases as may be specified in an order made by the Secretary of State, the Secretary of State; and
  - (b) in any other case, OFCOM.
- (2) Where an application for the purposes of section 69 is made to the Secretary of State or OFCOM and it appears to the person to whom it is made that it should have been made to the other--
- (a) that person is to refer the application to the other; and
  - (b) the application is to be proceeded with as if made to the person to whom it is referred.

### ***Marking etc of apparatus***

## **72 Information etc on or with apparatus**

- (1) This section applies where it appears to OFCOM to be expedient that relevant apparatus of a particular description should be marked with or accompanied by particular information or instruction relating to--
- (a) the apparatus; or
  - (b) its installation or use.
- (2) OFCOM may by order--
- (a) impose requirements for securing that relevant apparatus of that description is so marked or accompanied; and
  - (b) regulate or prohibit the supply of such relevant apparatus in cases where the requirements are not complied with.
- (3) The requirements imposed by the order may extend to the form and manner in which the information or instruction is given.

- (4) In the case of apparatus supplied in circumstances where the required information or instruction would not be conveyed until after delivery, an order under this section may require the whole or part of the information or instruction to be also displayed near the apparatus.
- (5) The approval of the Secretary of State is required for the making by OFCOM of an order under this section.
- (6) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

### **73 Information etc in advertisements**

- (1) This section applies where it appears to OFCOM to be expedient that a particular description of advertisements for relevant apparatus should contain or refer to particular information relating to--
  - (a) the apparatus; or
  - (b) its installation or use.
- (2) OFCOM may by order impose requirements as to the inclusion in advertisements of that description of--
  - (a) that information; or
  - (b) an indication of the means by which that information may be obtained.
- (3) An order under this section may specify the form and manner in which the information or indication required by the order is to be included in a particular description of advertisements.
- (4) The approval of the Secretary of State is required for the making by OFCOM of an order under this section.
- (5) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

### **74 Offences**

- (1) A person commits an offence if in the course of a trade or business he supplies, or offers to supply, apparatus in contravention of an order under section 72.
- (2) A person is to be treated as offering to supply apparatus if--
  - (a) he exposes apparatus for supply, or
  - (b) he has apparatus in his possession for supply.
- (3) A person who publishes an advertisement for apparatus to be supplied in the course of a trade or business commits an offence if the advertisement fails to comply with a requirement imposed by an order under section 73.
- (4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Proceedings for an offence under this section may be commenced at any time within the period of 12 months beginning with the day after the commission of the offence.

## **75 Default of third person**

- (1) Where the commission by one person ("A") of an offence under section 74(1) or (3) is due to the act or default of another ("B"), B also commits the offence; and B may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against A.
- (2) In proceedings for an offence under section 74(1) or (3) it is a defence for the defendant to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (3) A person may not rely on a defence under subsection (2) which involves an allegation that the commission of the offence was due to the act or default of another person unless--
- (a) at least seven clear days before the hearing he has given to the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession; or
  - (b) the court grants him leave.
- (4) In proceedings for an offence under section 74(3) it is a defence for the defendant to prove that--
- (a) at the time of the alleged offence he was a person whose business it was to publish or arrange for the publication of advertisements;
  - (b) he received the advertisement for publication in the ordinary course of business; and
  - (c) he did not know and had no reason to suspect that publication of the advertisement would amount to an offence under that subsection.

### ***Interpretation***

## **76 Part 4: interpretation**

In this Part--

"advertisement" includes a catalogue, a circular and a price list;

"relevant apparatus" means wireless telegraphy apparatus or apparatus designed or adapted for use in connection with wireless telegraphy apparatus.

## **Part 5**

### **Prohibition of Broadcasting from Sea or Air**

#### ***Prohibitions***

## **77 Broadcasting from ships and aircraft**

- (1) It is unlawful--
- (a) in the case of any ship or aircraft, to make a broadcast from it while it is in or over the United Kingdom or external waters; or
  - (b) in the case of a British-registered ship or British-registered aircraft, to make a broadcast from it while it is not in or over the United Kingdom or external waters.

- (2) If a broadcast is made from a ship in contravention of subsection (1), an offence is committed by--
- (a) the owner of the ship;
  - (b) the master of the ship; and
  - (c) a person who operates, or participates in the operation of, the apparatus by means of which the broadcast is made.

- (3) If a broadcast is made from an aircraft in contravention of subsection (1), an offence is committed by--

- (a) the operator of the aircraft;
- (b) the commander of the aircraft; and
- (c) a person who operates, or participates in the operation of, the apparatus by means of which the broadcast is made.

- (4) A person commits an offence if he procures a broadcast to be made in contravention of subsection (1).

- (5) In this section--

"master", in relation to a ship, includes any other person (except a pilot) who has command or charge of the ship;

"operator", in relation to an aircraft, means the person who at the relevant time has the management of the aircraft.

## **78 Broadcasting from marine structures etc**

- (1) This section applies to--

- (a) tidal waters in the United Kingdom;
- (b) external waters;
- (c) waters in a designated area.

- (2) It is unlawful to make a broadcast from--

- (a) a structure, other than a ship, that is affixed to, or supported by, the bed of waters to which this section applies, or
- (b) any other object in those waters.

- (3) Subsection (2) does not apply by virtue of paragraph (b) to a broadcast made from a ship or aircraft.

- (4) A person commits an offence if he operates, or participates in the operation of, apparatus by means of which a broadcast is made in contravention of subsection (2).

- (5) A person commits an offence if he procures a broadcast to be made in contravention of subsection (2).

## **79 Broadcasting from prescribed areas of high seas**

- (1) It is unlawful--
- (a) to make a broadcast that is capable of being received in the United Kingdom, or
  - (b) to make a broadcast that causes interference with any wireless telegraphy in the United Kingdom,
- from a ship (other than a British-registered ship) while it is within a prescribed area of the high seas.
- (2) If a broadcast is made in contravention of subsection (1), an offence is committed by--
- (a) the owner of the ship from which the broadcast is made;
  - (b) the master of the ship; and
  - (c) a person who operates, or participates in the operation of, apparatus by means of which the broadcast is made.
- (3) A person commits an offence if he procures a broadcast to be made in contravention of subsection (1).
- (4) The making of a broadcast does not contravene subsection (1) if it is shown to have been authorised under the law of a country or territory outside the United Kingdom.
- (5) "Prescribed" means prescribed for the purposes of this section by an order made by the Secretary of State.

### **80 Acts connected with broadcasting**

- (1) A British person commits an offence if he operates, or participates in the operation of, apparatus by means of which a broadcast is made--
- (a) from a ship (other than a British-registered ship) while it is on the high seas;
  - (b) from an aircraft (other than a British-registered aircraft) while it is on or over the high seas;
  - (c) from a structure (other than a ship) that is affixed to, or supported by, the bed of the high seas; or
  - (d) from an object on the high seas (other than a structure falling within paragraph (c), a ship or an aircraft).
- (2) Subsection (1) does not apply--
- (a) by virtue of paragraph (a), to a broadcast made in contravention of section 79(1);
  - (b) by virtue of paragraph (c) or (d), to a broadcast made from a structure or other object in waters in a designated area.
- (3) A person commits an offence if he procures a broadcast to be made as mentioned in subsection (1).

### **81 Management of station**

- (1) A person commits an offence if, from anywhere in the United Kingdom or external waters, he participates in the management, financing, operation or day-to-day running of a broadcasting station by which broadcasts are made--
- (a) in contravention of section 77(1), 78(2) or 79(1); or

(b) as mentioned in section 80(1)(a).

(2) In this section "broadcasting station" means a business or other operation (whether or not in the nature of a commercial venture) that is engaged in the making of broadcasts.

## **82 Facilitating broadcasting from ships or aircraft**

(1) A person commits an offence if he provides a ship or aircraft to another, or agrees to do so, knowing, or having reasonable cause to believe, that broadcasts are to be made from it--

- (a) in contravention of section 77(1); or
- (b) while it is on or over the high seas.

(2) A person commits an offence if--

- (a) he carries wireless telegraphy apparatus in a ship or aircraft, or agrees to do so, or
- (b) he supplies wireless telegraphy apparatus to a ship or aircraft, or installs such apparatus in a ship or aircraft,

knowing, or having reasonable cause to believe, that by means of the apparatus broadcasts are to be made from the ship or aircraft as mentioned in subsection (1).

(3) A person commits an offence if--

- (a) he supplies goods or materials--
  - (i) for the operation or maintenance of a ship or aircraft,
  - (ii) for the operation or maintenance of wireless telegraphy apparatus installed in a ship or aircraft, or
  - (iii) for the sustenance or comfort of the persons on board a ship or aircraft,
- (b) he carries by water or air goods or persons to or from a ship or aircraft, or
- (c) he engages a person as an officer or one of the crew of a ship or aircraft,

knowing, or having reasonable cause to believe, that broadcasts are made, or are to be made, from the ship or aircraft as mentioned in subsection (1).

(4) In proceedings for an offence under this section consisting in carrying goods or persons to or from a ship or aircraft, it is a defence for the defendant to prove--

- (a) that the ship or aircraft was, or was believed to be, wrecked, stranded or in distress, and that the goods or persons were carried for the purpose of--
  - (i) preserving the ship or aircraft, or its cargo or equipment, or
  - (ii) saving the lives of persons on board the ship or aircraft; or
- (b) that a person on board the ship or aircraft was, or was believed to be, hurt, injured or ill, and that the goods or persons were carried for the purpose of securing that he received the necessary surgical or medical advice and attendance.

- (5) The reference in subsection (4)(a) to persons carried for the purpose of saving lives is not to be read as excluding the persons whose lives were to be saved.
- (6) The reference in subsection (4)(b) to persons carried for the purpose of securing that advice and attendance were received is not to be read as excluding the person who was (or was believed to be) hurt, injured or ill.
- (7) In proceedings for an offence under this section consisting in carrying a person ("A") to or from a ship or aircraft, it is a defence for the defendant to prove that A was visiting the ship or aircraft for the purpose of exercising or performing a power or duty conferred or imposed on A by law.
- (8) This section is subject to section 86.

### **83 Facilitating broadcasting from structures etc**

(1) A person commits an offence if he installs wireless telegraphy apparatus on or in a structure or other object, or supplies such apparatus for installation on or in a structure or other object, knowing, or having reasonable cause to believe, that by means of the apparatus broadcasts are to be made from it--

- (a) in contravention of section 78(2); or
- (b) while it is on the high seas.

(2) A person commits an offence if, in the case of a structure or other object--

- (a) he supplies goods or materials--
  - (i) for its maintenance,
  - (ii) for the operation or maintenance of wireless telegraphy apparatus installed in or on it, or
  - (iii) for the sustenance or comfort of the persons in or on it,
- (b) he carries goods or persons to or from it by water or air, or
- (c) he engages a person to render services in or on it,

knowing, or having reasonable cause to believe, that broadcasts are made, or are to be made, from the structure or other object as mentioned in subsection (1).

(3) In proceedings for an offence under this section consisting in carrying goods or persons to or from a structure or other object, it is a defence for the defendant to prove--

- (a) that it was, or was believed to be, unsafe, and that the goods or persons were carried for the purpose of saving the lives of persons in or on it; or
- (b) that a person in or on it was, or was believed to be, hurt, injured or ill, and that the goods or persons were carried for the purpose of securing that he received the necessary surgical or medical advice and attendance.

(4) The reference in subsection (3)(a) to persons carried for the purpose of saving lives is not to be read as excluding the persons whose lives were to be saved.

(5) The reference in subsection (3)(b) to persons carried for the purpose of securing that advice and attendance were received is not to be read as excluding the person who was (or was believed to be) hurt, injured or ill.

- (6) In proceedings for an offence under this section consisting in carrying a person ("A") to or from a structure or other object, it is a defence for the defendant to prove that A was visiting it for the purpose of exercising or performing a power or duty conferred or imposed on A by law.
- (7) In this section references to a structure or other object do not include references to a ship or aircraft.
- (8) This section is subject to section 86.

#### **84 Maintaining or repairing apparatus**

- (1) A person commits an offence if he repairs or maintains wireless telegraphy apparatus knowing, or having reasonable cause to believe, that by means of it broadcasts are made, or are to be made--
  - (a) in contravention of section 77(1), 78(2) or 79(1); or
  - (b) as mentioned in section 80(1).
- (2) This section is subject to section 86.

#### **85 Acts relating to broadcast material**

- (1) A person commits an offence if--
  - (a) he supplies a film or sound recording knowing, or having reasonable cause to believe, that an unlawful broadcast is to be made of it;
  - (b) he makes a literary, dramatic or musical work knowing, or having reasonable cause to believe, that an unlawful broadcast is to be made of it;
  - (c) he makes an artistic work knowing, or having reasonable cause to believe, that it is to be included in an unlawful television broadcast;
  - (d) he participates in an unlawful broadcast;
  - (e) he advertises by means of an unlawful broadcast or invites another to advertise by means of an unlawful broadcast that is to be made;
  - (f) he publishes the times or other details of unlawful broadcasts that are to be made, or (otherwise than by publishing such details) publishes an advertisement of matter calculated to promote (whether directly or indirectly) the interests of a business whose activities consist in or include the operation of a station from which unlawful broadcasts are or are to be made.
- (2) An unlawful broadcast is a broadcast made--
  - (a) in contravention of section 77(1), 78(2) or 79(1); or
  - (b) as mentioned in section 80(1).
- (3) A person participates in a broadcast only if he is actually present--
  - (a) as an announcer;
  - (b) as a performer or one of the performers concerned in an entertainment given; or
  - (c) as the deliverer of a speech.

(4) The cases in which a person is to be taken for the purposes of this section as advertising by means of a broadcast include any case in which he causes or allows it to be stated, suggested or implied that entertainment included in the broadcast--

- (a) has been supplied by him; or
- (b) is provided wholly or partly at his expense.

(5) For the purposes of this section advertising by means of a broadcast takes place not only where the broadcast is made but also wherever it is received.

(6) This section is subject to section 86.

### **86 Facilitation offences: territorial scope**

(1) A person who does an act mentioned in section 82, 83, 84 or 85 does not commit an offence under that section unless condition A, B, C, D or E is satisfied.

(2) Condition A is satisfied if he does the act in the United Kingdom or external waters.

(3) Condition B is satisfied if he does the act in a British-registered ship or British-registered aircraft while it is not in or over the United Kingdom or external waters.

(4) Condition C is satisfied if, in a case where--

- (a) neither condition A nor condition B is satisfied, but
- (b) the broadcasts in question are made, or are to be made, from a structure or other object (which is not a ship or aircraft) in waters in a designated area,

he does the act on that structure or other object within those waters.

(5) Condition D is satisfied if, in a case where--

- (a) neither condition A nor condition B is satisfied, but
- (b) the broadcasts in question are made, or are to be made, from a ship in contravention of section 79(1),

he does the act in that ship within an area of the high seas that is prescribed for the purposes of section 79.

(6) Condition E is satisfied if--

- (a) he is a British person; and
- (b) he does the act on or over the high seas.

### **87 Procuring person to commit offence abroad**

A person commits an offence if he procures, in the United Kingdom, another person to do, outside the United Kingdom, anything that would have constituted an offence under sections 82 to 85 had the other person done it in the United Kingdom.

### ***Enforcement***

## 88 Enforcement officers

- (1) For the purposes of sections 89 to 92 enforcement officers are--
- (a) persons authorised by the Secretary of State or OFCOM to exercise the powers conferred by sections 89 and 90;
  - (b) police officers;
  - (c) commissioned officers of Her Majesty's armed forces;
  - (d) officers of Revenue and Customs; and
  - (e) other persons who are British sea-fishery officers by virtue of section 7(1) of the Sea Fisheries Act 1968 (c 77).
- (2) A reference in sections 89 to 92, in relation to an enforcement officer, to an assistant is a reference to a person assigned to assist the enforcement officer in his duties.
- (3) In this section "armed forces" means the Royal Navy, the Royal Marines, the regular army and the regular air force, and a reserve or auxiliary force of any of those services that has been called out on permanent service or embodied.

## 89 Enforcement powers

- (1) If conditions A and B are satisfied in the case of a ship, structure or other object, an enforcement officer may, with or without assistants, exercise the powers mentioned in subsection (4) in relation to it.
- (2) Condition A is satisfied if the enforcement officer has reasonable grounds for suspecting that--
- (a) an offence under this Part has been or is being committed by the making of a broadcast--
    - (i) from a ship, structure or other object in external waters or in tidal waters in the United Kingdom, or
    - (ii) from a British-registered ship while it is on the high seas;
  - (b) an offence under section 78 has been or is being committed by the making of a broadcast from a structure or other object in waters in a designated area; or
  - (c) an offence under section 79 has been or is being committed by the making of a broadcast from a ship.
- (3) Condition B is satisfied if a written authorisation has been issued by the Secretary of State or OFCOM for the exercise of the powers mentioned in subsection (4) in relation to that ship, structure or other object.
- (4) The powers are--
- (a) to board and search the ship, structure or other object;
  - (b) to seize and detain it, and any apparatus or other thing found in the course of the search that appears to him--
    - (i) to have been used, or to have been intended to be used, in connection with the commission of the suspected offence, or
    - (ii) to be evidence of the commission of the suspected offence;

(c) to arrest and search any person who he has reasonable grounds to suspect has committed or is committing an offence under this Part if--

- (i) the person is on board the ship, structure or other object, or
- (ii) the officer has reasonable grounds for suspecting that the person was on board at, or shortly before, the time when the officer boarded the object;

(d) to arrest any person--

- (i) who assaults him, or an assistant of his, while exercising any of the powers mentioned in this subsection, or
- (ii) who intentionally obstructs him, or an assistant of his, in the exercise of any of those powers;

(e) to require any person on board the ship, structure or other object to produce any documents or other items that are in his custody or possession and are or may be evidence of the commission of an offence under this Part;

(f) to require any such person to do anything for the purpose of--

- (i) enabling any apparatus or other thing to be rendered safe and, in the case of a ship, enabling the ship to be taken to a port, or
- (ii) facilitating in any other way the exercise of any of the powers mentioned in this subsection;

(g) to use reasonable force, if necessary, in exercising any of those powers.

(5) In subsection (4)(a) to (c) and (e) a reference to the ship, structure or other object includes a reference to a ship's boat, or other vessel, used from it.

## **90 Enforcement powers: facilitation offences**

(1) Subsection (2) applies if--

- (a) a written authorisation has been issued by the Secretary of State or OFCOM under section 89(3) for the exercise of the powers mentioned in section 89(4) in relation to a ship, structure or other object, and
- (b) an enforcement officer has reasonable grounds for suspecting that an offence under section 82, 83, 84 or 85 has been or is being committed in connection with the making of a broadcast from that ship, structure or other object.

(2) The enforcement officer may, with or without assistants, exercise the powers mentioned in section 89(4) in relation to any ship, structure or other object which he has reasonable grounds to suspect has been or is being used in connection with the commission of the offence referred to in subsection (1)(b).

(3) Subsection (4) applies if--

- (a) an enforcement officer has reasonable grounds for suspecting that an offence under section 82, 83, 84 or 85 has been or is being committed in connection with the making of a broadcast from a ship, structure or other object, but
- (b) no written authorisation has been issued under section 89(3) for the exercise of the powers mentioned in section 89(4) in relation to that ship, structure or other object.

(4) The enforcement officer may, with or without assistants, exercise the powers mentioned in section 89(4) in relation to any ship, structure or other object which he has reasonable grounds to suspect has been or is being used in connection with the commission of the offence referred to in subsection (3)(a).

(5) Subsection (4) only applies if a written authorisation under this subsection has been issued by the Secretary of State or OFCOM for the exercise of those powers in relation to that ship, structure or other object.

## **91 Exercise of powers**

(1) Except as provided in subsections (2) and (3), the powers mentioned in section 89(4) may be exercised only in tidal waters in the United Kingdom or in external waters.

(2) The powers may in addition--

(a) in the case of a suspected offence under this Part committed in a British-registered ship while it is on the high seas, be exercised in relation to the ship on the high seas;

(b) in the case of a suspected offence under section 78 committed on a structure or other object within waters in a designated area, be exercised in relation to the structure or other object within those waters;

(c) in the case of a suspected offence under section 79 committed in a ship within an area of the high seas prescribed for the purposes of that section, be exercised in relation to the ship within that area of the high seas.

(3) Subsection (2) does not apply so far as the powers are exercisable by virtue of a written authorisation issued by OFCOM.

## **92 Further provisions**

(1) A person commits an offence if--

(a) he assaults an enforcement officer, or an assistant of his, while he is exercising any of the powers conferred by section 89 or 90;

(b) he intentionally obstructs an enforcement officer, or an assistant of his, in the exercise of any of those powers; or

(c) he fails or refuses, without reasonable excuse, to comply with such a requirement as is mentioned in section 89(4)(e) or (f).

(2) Neither an enforcement officer nor an assistant of his is liable in civil or criminal proceedings for anything done in purported exercise of any of the powers conferred by section 89 or 90 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(3) Nothing in sections 89 to 91 or this section affects the exercise of any powers exercisable apart from those sections.

(4) A reference in sections 89 to 91 or this section, in relation to an enforcement officer's assistant, to the exercise of any of the powers mentioned in section 89(4) is a reference to the exercise by the assistant of any of those powers on behalf of the officer.

### ***Penalties and proceedings***

### 93 Penalties and proceedings

- (1) A person who commits an offence under this Part is liable--
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (2) In the application of subsection (1) to Scotland or Northern Ireland the reference to 12 months is to be read as a reference to six months.
- (3) Proceedings in England and Wales for an offence under this Part may be brought only--
- (a) by OFCOM; or
  - (b) by or with the consent of the Secretary of State or the Director of Public Prosecutions.
- (4) Proceedings in Northern Ireland for an offence under this Part may be brought only--
- (a) by OFCOM; or
  - (b) by or with the consent of the Secretary of State or the Advocate General for Northern Ireland.
- (5) Summary proceedings in Scotland for an offence under this Part may be commenced at any time within the period of two years beginning with the day after the commission of the offence.

### *Saving*

#### 94 Saving for certain broadcasts

Nothing in this Part makes it unlawful to do anything under and in accordance with a wireless telegraphy licence, or to procure anything to be so done.

### *Interpretation*

#### 95 Part 5: interpretation

- (1) In this Part--

"British-registered" means registered in the United Kingdom, the Isle of Man or any of the Channel Islands;

"broadcast" means a broadcast by wireless telegraphy of sounds or visual images intended for general reception (whether or not the sounds or images are actually received by anyone), but does not include a broadcast consisting in a message or signal sent in connection with navigation or for the purpose of securing safety;

"designated area" has the meaning given by section 1(7) of the Continental Shelf Act 1964 (c 29);

"external waters" means the whole of the sea adjacent to the United Kingdom that is within the seaward limits of UK territorial sea;

"the high seas" means seas that are not within the seaward limits of UK territorial sea or of the territorial waters adjacent to a country or territory outside the United Kingdom.

- (2) For the purposes of this Part references to a "British person" are references to--
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 (c 61) is a British subject; or
  - (c) a British protected person within the meaning given by section 50(1) of that Act.

## **Part 6**

### **General**

#### ***Fixed penalties***

#### **96 Fixed penalties for summary offences**

Schedule 4 (which makes provision as respects fixed penalty notices for certain summary offences) has effect.

#### ***Entry, search and seizure***

#### **97 Powers of entry and search**

- (1) A justice of the peace may grant a search warrant under this section if he is satisfied by information on oath that--
- (a) there is reasonable ground for suspecting that an offence under this Act, other than an offence under Part 4 or section 111, has been or is being committed; and
  - (b) evidence of the commission of the offence is to be found on premises specified in the information, or in a vehicle, ship or aircraft so specified.
- (2) A search warrant under this section is a warrant empowering a constable or any person or persons authorised for the purpose by OFCOM or the Secretary of State--
- (a) to enter, at any time within the relevant period, the premises specified in the information or (as the case may be) the vehicle, ship or aircraft so specified and any premises on which it may be;
  - (b) to search the premises, vehicle, ship or aircraft;
  - (c) to examine and test any apparatus found there.
- (3) In subsection (2) "the relevant period" means the period of three months beginning with the day after the date of the warrant.
- (4) In the application of subsection (3) to Scotland or Northern Ireland the reference to three months is to be read as a reference to one month.
- (5) Where a person authorised by OFCOM or the Secretary of State is empowered by a search warrant under this section to enter any premises, he is to be entitled to exercise that warrant alone or to exercise it accompanied by one or more constables.

(6) A person authorised by OFCOM or the Secretary of State to exercise a power conferred by this section may if necessary use reasonable force in the exercise of the power.

(7) Subsection (6) does not affect any power exercisable apart from that subsection by a person so authorised.

(8) Where under this section a person has a right to examine and test apparatus on premises or in a ship, aircraft or vehicle, any person who--

- (a) is on the premises, or
- (b) is in charge of, or in or in attendance on, the ship, aircraft or vehicle,

must give him whatever assistance he may reasonably require in the examination or testing of the apparatus.

(9) In this section--

- (a) a reference to a justice of the peace is to be read, in Scotland, as a reference to a sheriff and, in Northern Ireland, as a reference to a lay magistrate;
- (b) a reference to information on oath is to be read, in Northern Ireland, as a reference to complaint on oath.

## **98 Obstruction and failure to assist**

(1) A person commits an offence if--

- (a) he intentionally obstructs a person in the exercise of the powers conferred on him under section 97; or
- (b) he fails or refuses, without reasonable excuse, to give to such a person any assistance which, under that section, he is under a duty to give to him.

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **99 Powers of seizure**

(1) This section applies to--

- (a) an indictable offence under this Act, other than an offence under section 111;
- (b) an offence under section 35, other than one consisting in the installation or use of receiving apparatus;
- (c) an offence under section 36, other than one where the relevant contravention of section 8 would constitute an offence consisting in the use of receiving apparatus;
- (d) an offence under section 48;
- (e) an offence under section 66.

(2) Where--

- (a) a search warrant is granted under section 97, and

- (b) the suspected offence (or any of the suspected offences) is an offence to which this section applies,

the warrant may authorise a person authorised by OFCOM to exercise the power conferred by this subsection to seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing found in the course of the search carried out in pursuance of the warrant that appears to him to be a relevant item.

- (3) If a constable or a person authorised by OFCOM to exercise the power conferred by this subsection has reasonable grounds to suspect that an offence to which this section applies has been or is being committed, he may seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing that appears to him to be a relevant item.
- (4) A person authorised by OFCOM to exercise a power conferred by this section may if necessary use reasonable force in the exercise of the power.
- (5) Subsection (4) does not affect any power exercisable by the person so authorised apart from that subsection.
- (6) Nothing in this section affects any power to seize or detain property that is exercisable by a constable apart from this section.
- (7) In this section--

"relevant item" means an item that--

- (a) was used in connection with an offence to which this section applies; or
- (b) is evidence of the commission of such an offence;

"relevant proceedings" means--

- (a) proceedings for an offence to which this section applies; or
- (b) proceedings for condemnation under Schedule 6.

## **100 Obstruction**

- (1) A person commits an offence if he intentionally obstructs a person in the exercise of the power conferred on him under section 99(3).
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### ***Disposal and forfeiture***

## **101 Detention and disposal of property**

- (1) This section applies to property seized by a person authorised by OFCOM--
- (a) in pursuance of a warrant under section 97; or
- (b) in the exercise of the power conferred by section 99(3).
- (2) The property may be detained--
- (a) until the end of the period of six months beginning with the date of seizure; or

- (b) if proceedings for an offence to which section 99 applies involving that property or proceedings under Schedule 6 for condemnation of that property as forfeited are instituted within that period, until the conclusion of those proceedings.
- (3) Subsections (4) to (6) apply in the case of property so detained which, after the end of the period authorised by subsection (2)--
- (a) remains in the possession of OFCOM; and
  - (b) has not been ordered to be forfeited under Schedule 5 or condemned as forfeited under Schedule 6.
- (4) OFCOM must take reasonable steps to deliver the property to the person who appears to them to be its owner.
- (5) If the property remains in the possession of OFCOM after the end of one year immediately following the end of the period of detention authorised by subsection (2), OFCOM may dispose of it in such manner as they think fit.
- (6) The delivery of the property in accordance with subsection (4) to the person who appears to OFCOM to be its owner does not affect the right of any other person to take legal proceedings for the recovery of the property--
- (a) against the person to whom the property is so delivered; or
  - (b) against any person subsequently in possession of the property.

## **102 Section 101: conclusion of proceedings**

- (1) This section applies to--
- (a) proceedings for an offence to which section 99 applies;
  - (b) proceedings under Schedule 6 for the condemnation of apparatus as forfeited.
- (2) Where proceedings to which this section applies are terminated by an appealable decision, they are not to be regarded as concluded for the purposes of section 101(2)(b)--
- (a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time; or
  - (b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.
- (3) Subsection (2) applies for determining, for the purposes of paragraph (b) of that subsection, when proceedings on an appeal are concluded as it applies for determining when the original proceedings are concluded.
- (4) References in subsection (2) to a decision which terminates proceedings include references to a verdict, sentence, finding or order that puts an end to the proceedings.
- (5) An appealable decision is a decision of a description against which an appeal will lie, whether by way of case stated or otherwise and whether with or without permission.
- (6) References to an appeal include references to an application for permission to appeal.

### **103 Forfeiture on conviction**

Schedule 5 (which makes provision in relation to forfeiture on conviction) has effect.

### **104 Forfeiture etc of restricted apparatus**

- (1) Apparatus to which this section applies is liable to forfeiture if, immediately before being seized, it was in a person's custody or control in contravention of section 62(5).
- (2) This section applies to apparatus if it has been seized--
  - (a) in pursuance of a warrant granted under section 97; or
  - (b) in the exercise of the power conferred by section 99(3).
- (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 6 (which makes provision in relation to the seizure and forfeiture of apparatus) has effect.

### ***Enforcement, proceedings etc***

### **105 Offences relating to ships or aircraft**

- (1) This section applies if an offence is committed under any of sections 11, 35 to 38, 46 to 48, 58 and 68.
- (2) Where the offence is committed in relation to a station or apparatus on board or released from a ship or aircraft, the captain or person for the time being in charge of the ship or aircraft is guilty of the offence (as well as anyone who is guilty of it apart from this subsection).
- (3) This section does not apply where the offence consists in the use by a passenger on board the ship or aircraft of receiving apparatus that is not part of the wireless telegraphy apparatus, if any, of the ship or aircraft.

### **106 Continuing offences**

- (1) This section applies where--
  - (a) a person is convicted of an offence under Part 2 or 3 consisting in--
    - (i) the use of a wireless telegraphy station or wireless telegraphy apparatus, or
    - (ii) a failure or refusal to cause a wireless telegraphy licence or an authority under section 52(3) to be surrendered; and
  - (b) the use, or the failure or refusal, continues after the conviction.
- (2) The person is to be treated as committing a separate offence in respect of every day on which the use, or the failure or refusal, so continues.
- (3) Subsection (2) does not affect the right to bring separate proceedings for contraventions of this Act taking place on separate occasions.

## 107 Proceedings and enforcement

- (1) Proceedings for--
- (a) an offence under Part 2, 3 or 6 (other than an offence under section 111) that is committed in UK territorial sea, or
  - (b) an offence under Part 5,

may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(2) For the purpose of the enforcement of any provision falling within subsection (3), a member of a police force has in any area of the sea within the seaward limits of UK territorial sea all the powers, protection and privileges which he has in the area for which he acts as constable.

- (3) The provisions are--
- (a) sections 8 to 11, 32 to 38 and 45 to 53;
  - (b) Part 3;
  - (c) Part 5;
  - (d) sections 97 to 100, 103, 105 and 106 and Schedule 5.

- (4) In the application of this section to Northern Ireland, subsection (2) has effect with the substitution--
- (a) for the words "a police force" of the words "the Police Service of Northern Ireland", and
  - (b) for the words "the area for which he acts as constable" of the words "Northern Ireland".

## 108 Civil proceedings

(1) Where the doing of a thing is rendered unlawful by Part 2 or 3, and it is also an offence under this Act, the fact that it is such an offence does not limit a person's right to bring civil proceedings in respect of the doing or apprehended doing of that thing.

(2) Without prejudice to the generality of subsection (1), compliance with a provision of Part 2 or 3 contravention of which is an offence under this Act is enforceable in civil proceedings by the Crown, or by OFCOM, for an injunction or for any other appropriate relief.

(3) In the application of this section to Scotland, subsection (2) has effect as if for the words from "civil proceedings" to the end there were substituted "civil proceedings by the Advocate General for Scotland, or by OFCOM, for an interdict or for any other appropriate relief or remedy".

## 109 Fines in Scotland

- (1) Fines imposed in respect of offences falling within subsection (2) are to be paid into the Consolidated Fund.
- (2) The offences are offences committed in Scotland under--
- (a) Part 2;

- (b) Part 3;
- (c) section 98;
- (d) section 100;
- (e) paragraph 5 of Schedule 5.

### **110 Criminal liability of company directors etc**

(1) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of--

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity,

he (as well as the body corporate) is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) Where an offence under this Act--

- (a) is committed by a Scottish firm, and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a partner of the firm,

he (as well as the firm) is guilty of that offence and is liable to be proceeded against and punished accordingly.

(3) "Director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### ***Disclosure of information***

### **111 General restrictions**

(1) Information with respect to a particular business which has been obtained in exercise of a power conferred by this Act is not, so long as that business continues to be carried on, to be disclosed without the consent of the person for the time being carrying on that business.

(2) Subsection (1) has effect subject to the following provisions of this section.

(3) Subsection (1) does not apply to any disclosure of information which is made--

- (a) for the purpose of facilitating the carrying out by OFCOM of any of their functions;
- (b) for the purpose of facilitating the carrying out by any relevant person of any relevant function;
- (c) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions;
- (d) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c 24) (criminal proceedings and investigations);
- (e) for the purpose of any civil proceedings brought under or because of this Act or any of the enactments or instruments mentioned in subsection (6); or
- (f) for the purpose of securing compliance with an international obligation of the United Kingdom.

(4) The following are relevant persons--

- (a) a Minister of the Crown and the Treasury;
- (b) the Scottish Executive;
- (c) a Northern Ireland department;
- (d) the Office of Fair Trading;
- (e) the Competition Commission;
- (f) the Consumer Panel;
- (g) the Welsh Authority;
- (h) a local weights and measures authority in Great Britain;
- (i) any other person specified for the purposes of this subsection in an order made by the Secretary of State.

(5) The following are relevant functions--

- (a) any function conferred by or under this Act;
- (b) any function conferred by or under any enactment or instrument mentioned in subsection (6);
- (c) any other function specified for the purposes of this subsection in an order made by the Secretary of State.

(6) The enactments and instruments referred to in subsections (3) and (5) are--

- (a) the Wireless Telegraphy Act 1967 (c 72);
- (b) the Trade Descriptions Act 1968 (c 29);
- (c) the Fair Trading Act 1973 (c 41);
- (d) the Consumer Credit Act 1974 (c 39);
- (e) the Competition Act 1980 (c 21);
- (f) the Telecommunications Act 1984 (c 12);
- (g) the Consumer Protection Act 1987 (c 43);
- (h) the Broadcasting Act 1990 (c 42);
- (i) the Broadcasting Act 1996 (c 55);
- (j) the Competition Act 1998 (c 41);
- (k) the Enterprise Act 2002 (c 40);
- (l) the Communications Act 2003 (c 21);
- (m) the Consumer Protection (Northern Ireland) Order 1987 (SI 1987/2049 (NI 20));
- (n) the Business Protection from Misleading Marketing Regulations 2008;
- (o) the Consumer Protection from Unfair Trading Regulations 2008.

(7) Nothing in this section--

- (a) limits the matters that may be published under section 15, 26 or 390 of the Communications Act 2003;
  - (b) limits the matters that may be included in, or made public as part of, a report made by OFCOM because of a provision of the Office of Communications Act 2002 (c 11) or the Communications Act 2003;
  - (c) prevents the disclosure of anything for the purposes of a report of legal proceedings in which it has been publicly disclosed;
  - (d) applies to information that has been published or made public as mentioned in paragraphs (a) to (c).
- (8) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure because of subsection (3)(d) as it has effect in relation to a disclosure in exercise of a power to which section 17 of that Act applies.
- (9) A person commits an offence if he discloses information in contravention of this section.
- (10) A person who commits an offence under subsection (9) is liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (11) No order is to be made containing provision authorised by subsection (4) or (5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (12) In this section--
- "the Consumer Panel" means the panel established under section 16 of the Communications Act 2003 (c 21);
  - "enactment" has the same meaning as in the Communications Act 2003;
  - "legal proceedings" means civil or criminal proceedings in or before any court, or proceedings before any tribunal established by or under any enactment;
  - "the Welsh Authority" means the authority whose name is, by virtue of section 56(1) of the Broadcasting Act 1990 (c 42), Sianel Pedwar Cymru.

### ***Notifications etc and electronic working***

#### **112 Service of documents**

- (1) This section applies where provision made (in whatever terms) by or under this Act authorises or requires--
- (a) a notification to be given to any person; or
  - (b) a document of any other description (including a copy of a document) to be sent to any person.
- (2) The notification or document may be given or sent to the person in question--
- (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.

- (3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (4) The notification or document may be given or sent to a firm by being given or sent to--
- (a) a partner in the firm; or
  - (b) a person having the control or management of the partnership business.
- (5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (6) For the purposes of this section and section 7 of the Interpretation Act 1978 (c 30) (service of documents by post) in its application to this section, the proper address of a person is--
- (a) in the case of a body corporate, the address of the registered or principal office of the body;
  - (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
  - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
  - (d) in any other case, the last known address of the person in question.
- (7) In the case of--
- (a) a company registered outside the United Kingdom,
  - (b) a firm carrying on business outside the United Kingdom, or
  - (c) an unincorporated body or association with offices outside the United Kingdom,

the references in subsection (6) to its principal office include references to its principal office within the United Kingdom (if any).

- (8) In this section--
- "document" includes anything in writing; and
  - "notification" includes notice;

and references to giving or sending a notification or other document to a person include references to transmitting it to him and to serving it on him.

- (9) This section has effect subject to section 113.

### **113 Documents in electronic form**

- (1) This section applies where--
- (a) section 112 authorises the giving or sending of a notification or other document by its delivery to a particular person ("the recipient"); and
  - (b) the notification or other document is transmitted to the recipient--
    - (i) by means of an electronic communications network; or

(ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) For the purposes of subsection (1), something is not to be regarded as in an intelligible form if it cannot be readily understood without being decrypted or having some comparable process applied to it.

(3) The transmission has effect for the purposes of this Act as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.

(4) Where the recipient is OFCOM--

- (a) they must have indicated their willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);
- (b) the transmission must be made in such manner and satisfy such other conditions as they may require; and
- (c) the notification or other document must take such form as they may require.

(5) Where the person making the transmission is OFCOM, they may (subject to subsection (6)) determine--

- (a) the manner in which the transmission is made; and
- (b) the form in which the notification or other document is transmitted.

(6) Where the recipient is a person other than OFCOM--

- (a) the recipient, or
- (b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.

(7) An indication to any person for the purposes of subsection (6)--

- (a) must be given to that person in such manner as he may require;
- (b) may be a general indication or one that is limited to notifications or documents of a particular description;
- (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
- (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

(8) An indication, requirement or determination given, imposed or made by OFCOM for the purposes of this section is to be given, imposed or made by being published 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.

(9) Section 112(8) applies for the purposes of this section as it applies for the purposes of section 112.

#### **114 Timing and location of things done electronically**

(1) The Secretary of State may by order make provision specifying, for the purposes of this Act, the manner of determining--

- (a) the times at which things done under this Act by means of electronic communications networks are done; and
  - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings--
- (a) that something done by means of an electronic communications network satisfies the requirements of this Act for the doing of that thing; and
  - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

### *Interpretation*

#### **115 General interpretation**

- (1) In this Act--

"artistic work" has the meaning given by section 4(1) of the Copyright, Designs and Patents Act 1988 (c 48);

"associated facility" has the meaning given by section 32 of the Communications Act 2003 (c 21);

"the Audiovisual Media Services Directive" means Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;

"broadcast" (except in sections 35 to 38 and Part 5), means broadcast by wireless telegraphy, and cognate expressions are to be construed accordingly;

"business" includes a trade or profession;

"communications provider" has the same meaning as in the Communications Act 2003;

"contravention" includes a failure to comply, and cognate expressions are to be construed accordingly;

"electric line" has the meaning given by section 64(1) of the Electricity Act 1989 (c 29);

"electronic communications network" and "electronic communications service" have the meaning given by section 32 of the Communications Act 2003;

"emission", in relation to electromagnetic energy, is to be construed in accordance with subsection (2);

"the enactments relating to the management of the radio spectrum" has the meaning given by section 405 of the Communications Act 2003;

"film" has the meaning given by section 5B(1) of the Copyright, Designs and Patents Act 1988 (c 48);

"frequency" includes frequency band;

"grant of recognised spectrum access" means a grant made under section 18;

"information" includes accounts, estimates and projections and any document;

"interfere" and "interference", in relation to wireless telegraphy, are to be construed in accordance with subsection (3);

"international obligation of the United Kingdom" includes any Community obligation and any obligation which will or may arise under any international agreement or arrangements to which the United Kingdom is party;

"literary, dramatic or musical work" has the same meaning as in Part 1 of the Copyright, Designs and Patents Act 1988;

"modification" includes omissions, alterations and additions, and cognate expressions are to be construed accordingly;

"OFCOM" means the Office of Communications;

"radio spectrum functions", in relation to OFCOM, means their functions under the enactments relating to the management of the radio spectrum;

"receiving apparatus" means wireless telegraphy apparatus that is not designed or adapted for emission (as opposed to reception);

"satellite uplink apparatus" means wireless telegraphy apparatus, the purpose of which is to emit, to one or more satellites, energy to which section 116(2) applies;

"satellite uplinker" means a person who operates satellite uplink apparatus, but where a person is employed or engaged to operate satellite uplink apparatus under the direction or control of another person, references to a satellite uplinker are references only to that other person;

"ship" includes every description of vessel used in navigation;

"sound recording" has the meaning given by section 5A(1) of the Copyright, Designs and Patents Act 1988;

"speech" includes lecture, address and sermon;

"supply", in relation to any item, is to be construed in accordance with subsection (6);

"UK territorial sea" means the territorial sea adjacent to the United Kingdom;

"wireless telegraphy" is to be construed in accordance with section 116;

"wireless telegraphy apparatus" is to be construed in accordance with section 117;

"wireless telegraphy licence" means a licence granted under section 8;

"wireless telegraphy station" is to be construed in accordance with section 117.

(2) A reference in this Act to the emission of electromagnetic energy, or to emission (as opposed to reception), includes a reference to the deliberate reflection (whether continuous or intermittent) of electromagnetic energy by means of apparatus designed or specially adapted for the purpose.

(3) For the purposes of this Act, wireless telegraphy is interfered with if the fulfilment of the purposes of the telegraphy is prejudiced (either generally or in part and, in particular, as respects all, or as respects any, of the recipients or intended recipients of a message, sound or visual image intended to be conveyed by the telegraphy) by an emission or reflection of electromagnetic energy.

(4) Interference with any wireless telegraphy is not to be regarded as undue for the purposes of this Act unless it is also harmful.

(5) 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 wireless telegraphy licence, regulations under section 8(3) or a grant of recognised spectrum access or otherwise lawfully.

(6) Section 46 of the Consumer Protection Act 1987 (c 43) has effect for the purpose of construing references in this Act to the supply of any thing as it has effect for the purpose of construing references in that Act to the supply of goods.

(7) In this Act (except Part 5) a reference to the sending or conveying of a message includes a reference to the making of a signal or the sending or conveying of a warning or information, and a reference to the reception of a message is to be construed accordingly.

(8) A reference in this Act to apparatus on board a ship includes a reference to apparatus on a kite or captive balloon flown from a ship.

### **116 "Wireless telegraphy"**

(1) In this Act "wireless telegraphy" means the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of energy to which subsection (2) applies.

(2) This subsection applies to electromagnetic energy of a frequency not exceeding 3,000 gigahertz that--

(a) serves for conveying messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or

(b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects.

(3) The Secretary of State may by order modify the definition of "wireless telegraphy" by substituting a different frequency for the frequency that is for the time being specified in subsection (2).

(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.

### **117 "Wireless telegraphy apparatus" and "wireless telegraphy station"**

(1) In this Act "wireless telegraphy apparatus" means apparatus for the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of energy to which section 116(2) applies.

(2) In this Act "wireless telegraphy station"--

(a) means a station for the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of energy to which section 116(2) applies; and

(b) includes the wireless telegraphy apparatus of a ship or aircraft.

### ***Extent and application***

**118 Extent**

- (1) Subject to subsection (2), this Act extends to Northern Ireland.
- (2) An amendment, repeal or revocation made by this Act has the same extent as the enactment or other instrument amended, repealed or revoked.
- (3) Her Majesty may by Order in Council extend the provisions of this Act, with such modifications as appear to Her Majesty to be appropriate, to the Isle of Man or any of the Channel Islands.
- (4) But subsection (3) does not authorise the extension of sections 62 to 67 to any of the Channel Islands.
- (5) Section 121(3) applies to the power to make an Order in Council under this section as it applies to a power of the Secretary of State to make an order under this Act, but as if references in section 121(3) to the Secretary of State were references to Her Majesty in Council.
- (6) The provisions capable of being extended outside the United Kingdom under--
  - (a) section 15(6) of the Wireless Telegraphy Act 1967 (c 72),
  - (b) section 204(6) of the Broadcasting Act 1990 (c 42),
  - (c) section 12(4) of the Intelligence Services Act 1994 (c 13),
  - (d) section 315(2) of the Merchant Shipping Act 1995 (c 21),
  - (e) section 150(4) of the Broadcasting Act 1996 (c 55), or
  - (f) section 411(6) of the Communications Act 2003 (c 21),

include any amendment of those provisions made by this Act.

**119 Territorial application**

- (1) The provisions mentioned in subsection (2) apply to--
  - (a) all stations and apparatus in or over, or for the time being in or over, the United Kingdom or UK territorial sea;
  - (b) subject to any limitations that the Secretary of State may by regulations determine, all stations and apparatus on board a ship or aircraft that is registered in the United Kingdom but is not for the time being in or over the United Kingdom or UK territorial sea; and
  - (c) subject to any limitations that the Secretary of State may by regulations determine, all apparatus not itself in or over the United Kingdom or UK territorial sea but released--
    - (i) from within the United Kingdom or UK territorial sea, or
    - (ii) from a ship or aircraft that is registered in the United Kingdom.
- (2) The provisions are--
  - (a) sections 8 to 11, 35 to 38, 45 to 49, 55 to 58 and 68; and
  - (b) regulations under section 54.
- (3) Her Majesty may by Order in Council direct that a reference in subsection (1) to a ship or aircraft registered in the United Kingdom is to be construed as including a reference to a ship or aircraft--

- (a) registered in the Isle of Man, in any of the Channel Islands or in a colony; or
- (b) registered under the law of any other country or territory outside the United Kingdom that is for the time being administered by Her Majesty's Government in the United Kingdom.

(4) For the purposes of paragraph 4(3) of Schedule 2 to the Interpretation Act 1978 (c 30) (meaning of "colony" in existing enactments), subsection (3) is to be treated as if contained in an Act passed before the commencement of that Act.

## **120 Territorial sea and other waters**

(1) Her Majesty may by Order in Council provide--

- (a) for an area of UK territorial sea to be treated, for the purposes of any provision of this Act, as if it were situated in such part of the United Kingdom as may be specified in the Order; and
- (b) for jurisdiction with respect to questions arising in relation to UK territorial sea under any such provision to be conferred on courts in a part of the United Kingdom so specified.

(2) An Order in Council under section 11 of the Petroleum Act 1998 (c 17) (application of civil law to off-shore installations etc) or section 87 of the Energy Act 2004 (c 20) (application of civil law to renewable energy installations etc) may make provision for treating--

- (a) an installation with respect to which provision is made under that section and which is outside UK territorial sea but in waters to which that section applies, and
- (b) waters within 500 metres of the installation,

as if, for the purposes of any provision of this Act, they were situated in such part of the United Kingdom as is specified in the Order.

(3) The jurisdiction conferred on a court by an Order in Council under this section is in addition to any jurisdiction exercisable apart from this section by that or any other court.

(4) Section 121(3) applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if references in section 121(3) to the Secretary of State were references to Her Majesty in Council.

(5) A statutory instrument containing an Order in Council under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) "Installation" includes any floating structure or device maintained on a station by whatever means, and installations in transit.

### ***Supplemental***

## **121 Orders and regulations made by Secretary of State**

(1) Every power conferred by this Act on the Secretary of State to make orders or regulations is exercisable by statutory instrument.

(2) A statutory instrument containing an order or regulations made in exercise of such a power, other than--

- (a) an order under section 5,

- (b) regulations under section 49(4)(g),
- (c) an order under section 111,
- (d) an order under section 116, or
- (e) an order under paragraph 26 or 27 of Schedule 8,

is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Every power of the Secretary of State to make an order or regulations under this Act includes power--

- (a) to make different provision for different cases (including different provision in respect of different areas);
- (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
- (c) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

## **122 Orders and regulations made by OFCOM**

(1) This section applies to every power of OFCOM to make regulations or an order under this Act.

(2) Those powers are exercisable by statutory instrument, and the Statutory Instruments Act 1946 (c 36) is to apply in relation to those powers as if OFCOM were a Minister of the Crown.

(3) Where an instrument made under such a power falls to be laid before Parliament, OFCOM must, immediately after it is made, send it to the Secretary of State for laying by him.

(4) Before making any regulations or order under such a power, OFCOM must--

- (a) give a notice of their proposal to do so to such persons representative of the persons appearing to OFCOM to be likely to be affected by the implementation of the proposal as OFCOM think fit;
- (b) publish notice of their proposal 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 and are not given notice by virtue of paragraph (a); and
- (c) consider any representations that are made to OFCOM, before the time specified in the notice.

(5) A notice for the purposes of subsection (4) must--

- (a) state that OFCOM propose to make the regulations or order in question;
- (b) set out the general effect of the regulations or order;
- (c) specify an address from which a copy of the proposed regulations or order may be obtained; and
- (d) specify a time before which any representations with respect to the proposal must be made to OFCOM.

(6) The time specified for the purposes of subsection (5)(d) must be no earlier than the end of the period of one month beginning with the day after the latest day on which the notice is given or published for the purposes of subsection (4).

(7) Every power of OFCOM to make regulations or an order under this Act includes power--

- (a) to make different provision for different cases (including different provision in respect of different areas);

- (b) to make provision subject to such exemptions and exceptions as OFCOM think fit; and
- (c) to make such incidental, supplemental, consequential and transitional provision as OFCOM think fit.

### **123 Consequential amendments**

Schedule 7 (consequential amendments) has effect.

### **124 Transitional provisions, savings and transitory modifications**

Schedule 8 (transitional provisions, savings and transitory modifications) has effect.

### **125 Repeals and revocations**

- (1) The enactments mentioned in Part 1 of Schedule 9 are repealed to the extent specified.
- (2) The instruments mentioned in Part 2 of that Schedule are revoked to the extent specified.

### **126 Short title and commencement**

- (1) This Act may be cited as the Wireless Telegraphy Act 2006.
- (2) This Act comes into force at the end of the period of three months beginning with the day on which it is passed.

## **SCHEDULE 1**

### **PROCEDURE FOR WIRELESS TELEGRAPHY LICENCES**

#### **Section 10**

#### ***General procedure for applications***

**1**

- (1) An application for a grant of a wireless telegraphy licence is to be determined in accordance with procedures prescribed in regulations made by OFCOM.
- (2) The procedures must include provision for--
  - (a) time limits for dealing with the granting of licences;
  - (b) requirements that must be met for the grant of a licence;
  - (c) particulars of the terms, provisions and limitations to which a licence may be made subject.

(3) The procedures must be—

- (a) open (except where sub-paragraph (4) applies);

(b) objective;

(c) transparent;

(d) not such as to discriminate unduly against particular persons or against a particular description of persons; and

(e) proportionate to what they are intended to achieve.

(4) The requirement for a procedure to be open does not apply if—

(a) the procedure relates to licences for frequencies for the broadcasting of television and radio programmes, and

(b) OFCOM thinks that, in order to ensure the fulfilment of a general interest objective (within the meaning given by section 8B(3)), the procedure should not be open.

### ***Time limits***

## **2**

(1) The time limits fixed for the purposes of paragraph 1(2) must require a decision on the application to be made, notified to the applicant and published--

(a) in the case of an application for a licence relating to a frequency allocated in accordance with the United Kingdom Plan for Frequency Authorisation, not more than six weeks after the day of the receipt of the application; and

(b) in any other case, as soon as possible after the receipt of the application.

(2) The period of six weeks specified in sub-paragraph (1)(a) may be extended by OFCOM where it appears to them necessary to do so--

(a) for the purpose of enabling the requirements of any international agreement relating to frequencies, to orbital positions or to satellite co-ordination to be complied with; or

(b) in a case where a determination falls to be made as to which of a number of applicants is the more or most suitable to be licensed, for the purpose of securing that the procedure for the making of that determination is fair, reasonable, open and transparent.

(3) The period may not be extended by virtue of sub-paragraph (2)(b) by more than eight months.

### ***Information to be provided in connection with applications***

## **3**

The grounds on which a licence may be refused by OFCOM include a failure by the applicant to provide information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with terms, provisions or limitations to which the licence may be made subject.

### ***Proposed refusal***

## **4**

Where OFCOM propose to refuse a licence they must--

(a) give to the applicant the reasons for the proposed refusal;

- (b) specify a period of not less than one month within which representations about the proposed refusal may be made.

### ***Duration***

5

A wireless telegraphy licence continues in force, unless previously revoked by OFCOM, for such period as may be specified in the licence.

### ***Revocation or variation***

6

OFCCOM may revoke a wireless telegraphy licence or vary its terms, provisions or limitations--

- (a) by a notice in writing given to the holder of the licence; or
- (b) by a general notice applicable to licences of the class to which the licence belongs, published in such way as may be specified in the licence.

6A. OFCCOM may not revoke or vary a wireless telegraphy licence unless the proposed revocation or variation is objectively justifiable

### ***Notification of proposed revocation or variation***

7

(1) Where OFCCOM propose to revoke or vary a wireless telegraphy licence, they must give the person holding the licence a notification under this sub-paragraph--

- (a) stating the reasons for the proposed revocation or variation; and
- (b) specifying the period during which the person notified has an opportunity ~~to do the things specified in sub-paragraph (2) to make representations about the proposal.~~

~~(2) The 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 sub-paragraphs (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.~~

(3) The period for making representations —

- (a) if the proposal is the result of a contravention of a term, provision or limitation of a licence, is such period as OFCCOM may specify; and
- (b) in any other case, must be the period of one month beginning with the day after the one on which the notification was given (but this is subject to sub-paragraphs (4) to (6)).

(4) OFCCOM may, if they think fit, allow a longer period for doing those things--

- (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 has a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.

(6) The person notified also has a shorter period if--

- (a) OFCOM have reasonable grounds for believing that the case is urgent ~~or a case of serious and repeated contravention~~;
- (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 urgent if the failure to revoke or vary 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 wireless telegraphy stations or wireless telegraphy apparatus; or
  - (ii) are communications providers or make associated facilities available.

~~(8) A contravention of a term, provision or limitation of a licence is a repeated contravention, in relation to a proposal to revoke or vary a licence, if it falls within sub-paragraph (9).~~

~~(9) A contravention falls within this sub-paragraph if--~~

- ~~(a) a previous notification under sub-paragraph (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 sub-paragraph is given no more than 12 months after the day of the making by OFCOM of a determination for the purposes of sub-paragraph (10) that the contravention to which the previous notification related did occur.~~

(10) Where OFCOM have given a notification under sub-paragraph (1), they must, 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 revoke or vary 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; ~~and-~~  
(c) in the case of a variation of a wireless telegraphy licence extending the duration of the licence, publish the notification and the reasons for the decision.

(11) The notification under sub-paragraph (10)--

- (a) must be given no more than one week after the making of the decision to which it relates; ~~and~~  
(aa) must give reasons for the decision; and
- (b) must, in accordance with that decision, either revoke or vary the licence or withdraw the proposal for a revocation or variation.

(12) Nothing in this paragraph applies to a proposal to revoke or vary a licence if the proposal is made at the request or with the consent of the holder of the licence (but OFCOM must, where a proposal is made by or with the consent of the holder of the licence to vary a wireless telegraphy licence in order to extend the duration of the licence, publish the notification of their decision and the reason for it).

~~(13) The reference in sub-paragraph (9) 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.~~

### ***Restriction on powers of revocation and variation***

## **8**

- (1) The terms that OFCOM may include in a wireless telegraphy licence include terms restricting the exercise by them of their power to revoke or vary the licence.
- (2) The terms that may be included because of sub-paragraph (1) include, in particular, terms providing that the licence may not be revoked or varied except--
  - (a) with the consent of the holder of the licence; or
  - (b) in such other circumstances and on such grounds as may be specified in the licence.
- (3) The circumstances or grounds may relate to matters relevant for the purposes of any other enactment (and may, in particular, be dependent on the exercise of a statutory discretion under any other enactment).
- (4) A licence containing terms included because of sub-paragraph (1) may also provide that regulations made under section 45--
  - (a) do not apply in relation to a station or apparatus to which the licence relates; or
  - (b) apply in relation to such a station or such apparatus to such extent only, or subject to such modifications, as may be specified in the licence.
- (5) Despite any term or provision included in a wireless telegraphy licence in accordance with this paragraph, OFCOM may at any time by giving the holder of the licence a notice in writing revoke the licence or vary its terms, provisions or limitations, if it appears to OFCOM to be necessary or expedient to do so--
  - (a) in the interests of national security; or
  - (b) for the purpose of securing compliance with an international obligation of the United Kingdom.