



Wireless Telegraphy Act 2006

2006 CHAPTER 36

PART 2

REGULATION OF RADIO SPECTRUM

CHAPTER 4

ENFORCEMENT

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).
- (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 (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for doing those things—
 - (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.

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;

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- (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—

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- (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.
- (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 (S.I. 1981/1675 (N.I. 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.

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- (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.

44 Relevant amount of gross revenue

- (1) The relevant amount of gross revenue for the purposes of section 43, 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 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.