
STATUTORY INSTRUMENTS

2008 No. 1420

**The Television Multiplex Services
(Reservation of Digital Capacity) Order 2008**

Reservation of capacity on Multiplex B

Variation of the Multiplex B licence

4.—(1) Subject to paragraph (6), OFCOM must vary the Multiplex B licence in accordance with this article so that, as from the time when the variations take effect, the licence includes such conditions as they consider appropriate for securing that, in consideration for the making by each broadcaster for whom such capacity has been reserved of such payments as are from time to time—

- (a) agreed between that broadcaster and the holder of the Multiplex B licence, or
- (b) in default of agreement, determined by OFCOM,

the holder of the Multiplex B licence will use digital capacity reserved on Multiplex B for the broadcasting of services provided by that broadcaster.

(2) The total digital capacity to be reserved for relevant public service broadcasters on Multiplex B—

- (a) during any period in respect of which OFCOM are satisfied there is capacity on Multiplex B sufficient for the broadcasting of three high definition television services, must never exceed capacity sufficient for the broadcasting of two such services; and
- (b) during any period in respect of which OFCOM are satisfied there is capacity on Multiplex B sufficient for the broadcasting of at least four high definition television services, must never exceed capacity sufficient for the broadcasting of three such services.

(3) Conditions included in the Multiplex B licence by virtue of this article must also secure that capacity so reserved for a broadcaster—

- (a) is reserved only for so long as the person for whom it is reserved remains a relevant public service broadcaster;
- (b) must be used for the broadcasting of such services as OFCOM may from time to time license the broadcaster to provide pursuant to the broadcaster's application under article 3, and
- (c) subject to sub-paragraph (b), may with the consent of OFCOM also be used for the broadcasting of other services from time to time provided by the broadcaster.

(4) In the case of capacity reserved for the holder of a Channel 3 licence, if it appears to OFCOM that the service or services authorised to be broadcast by means of that reserved capacity are no longer being provided on behalf of at least 13 holders of regional Channel 3 licences, they may terminate the reservation of digital capacity (and if appropriate vary the Multiplex B licence accordingly), having first given—

- (a) each holder of a Channel 3 licence on whose behalf the service or services is or are being provided, and
- (b) the holder of the Multiplex B licence,

a reasonable opportunity to make representations about the matter.

(5) OFCOM may reserve digital capacity under this article either for the whole of each day or for any part or parts of each day, as they think fit.

(6) OFCOM are to vary the Multiplex B licence in accordance with the preceding provisions of this article—

(a) on the first occasion—

(i) if, but only if, the condition in paragraph (7) is satisfied, and

(ii) within 12 months of the date on which they make a determination under article 3 in consequence of which that condition is first satisfied; and

(b) thereafter, if applicable, within 12 months of the date on which they make a determination under article 3 to reserve for one or more relevant public service broadcasters capacity sufficient for the broadcasting of a third high definition television service.

(7) The condition is that OFCOM must have made a determination under article 3 whose effect is to reserve for one or more relevant public service broadcasters digital capacity on Multiplex B sufficient for the broadcasting of two or three high definition television services.

(8) At any time when there is digital capacity on Multiplex B reserved for any relevant public service broadcaster—

(a) that broadcaster, or

(b) the holder of the Multiplex B licence,

or both of them, may refer to OFCOM for determination any question arising as to the amount of digital capacity which is sufficient for the broadcasting of two or (as the case may be) three high definition television services.