



# Digital Economy Act 2017

## 2017 CHAPTER 30

### PART 2

#### DIGITAL INFRASTRUCTURE

##### *Dynamic spectrum access services*

### 8 Regulation of dynamic spectrum access services

(1) After Part 2 of the Wireless Telegraphy Act 2006 insert—

#### “PART 2A

#### REGULATION OF DYNAMIC SPECTRUM ACCESS SERVICES

##### *Registration*

#### 53A Registration of providers of dynamic spectrum access services

- (1) A person who provides, or proposes to provide, a dynamic spectrum access service may be registered under this section by OFCOM.
- (2) An application for registration under this section—
  - (a) is to be made to OFCOM, and
  - (b) must contain such information as OFCOM may reasonably require.
- (3) OFCOM must, from time to time as they think fit, publish—
  - (a) the criteria for determining applications under this section, and
  - (b) information relating to the restrictions and conditions to which registration under this section may be subject.

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- (4) The criteria published under subsection (3)(a) may include different provision for different cases.
- (5) Registration under this section is to be for such period, and subject to such restrictions and conditions, as OFCOM think fit.
- (6) Any such restrictions and conditions are to be contained in a notice in writing given to the person registered under this section.
- (7) In this Act “dynamic spectrum access service” means a service that provides information about—
  - (a) the availability for use by wireless telegraphy stations and wireless telegraphy apparatus of frequencies that fall within a frequency band specified in regulations made by OFCOM, and
  - (b) the places in which, the power at which, the times when and any conditions subject to which such stations and apparatus may use such frequencies.

### **53B Revocation and variation of registration**

- (1) OFCOM may revoke a registration under section 53A, or vary the restrictions and conditions to which it is subject—
  - (a) by notice in writing given to the person registered under that section, or
  - (b) by a general notice applicable to the class to which the person belongs, published in such way as appears to OFCOM to be appropriate.
- (2) Where OFCOM propose to revoke or vary a registration, they must give the person registered under section 53A a notification—
  - (a) stating the reason for the proposed revocation or variation, and
  - (b) specifying the period during which the person notified has an opportunity to make representations about the proposal.
- (3) Nothing in subsection (2) applies to a proposal to revoke or vary a registration if the proposal is made at the request or with the consent of the person registered under section 53A.
- (4) Nothing in this section applies in relation to—
  - (a) a notification given under section 53E, or
  - (b) a decision given under section 53G.

### **53C Register of providers of dynamic spectrum access services**

- (1) OFCOM must establish and maintain a register for the purposes of this Part.
- (2) The register is to contain—
  - (a) the names of the persons registered under section 53A, and
  - (b) such other information relating to the registration of those persons as OFCOM consider appropriate.
- (3) OFCOM may make available to users or prospective users of dynamic spectrum access services such information contained in the register as they consider appropriate.

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## *Fees*

### **53D Fees for registration etc**

- (1) Regulations made by OFCOM may provide for OFCOM to charge fees—
  - (a) for registering a person under section 53A;
  - (b) for the continuation in force of such a registration;
  - (c) for the variation or revocation of such a registration;
  - (d) for anything done by OFCOM in connection with facilitating the service provided by a person registered under section 53A.
- (2) Subsection (1)(d) does not include anything for which OFCOM may charge under any other enactment.
- (3) The fees—
  - (a) are to be determined by or in accordance with the regulations, and
  - (b) are to be payable by the person who is to be, is or has been registered under section 53A.
- (4) The regulations may—
  - (a) confer exemptions 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.
- (5) Where OFCOM register a person in circumstances in which sums will or may subsequently become payable under the regulations, OFCOM may require such security to be given, by way of deposit or otherwise, for the payment of those sums as they think fit.
- (6) A sum which is required to be paid to OFCOM by virtue of the regulations must be paid to OFCOM as soon as it becomes payable in accordance with the regulations and, if it is not paid, is recoverable by them accordingly.

## *Enforcement*

### **53E Notification of contravention of registration restrictions or conditions**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person registered under section 53A is contravening, or has contravened, the restrictions or conditions subject to which the person is registered 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 restriction or condition and contravention in respect of which that determination has been made,
  - (c) specifies the period during which the person notified has an opportunity to make representations,

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- (d) specifies the steps that OFCOM think should be taken by the person in order to—
    - (i) comply with the restriction or condition;
    - (ii) remedy the consequences of the contravention,
  - (e) if OFCOM are minded to suspend or revoke the person's registration, contains a statement to that effect, and
  - (f) specifies any penalty which OFCOM are minded to impose in accordance with section 53F.
- (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 restriction or condition, OFCOM may give a further notification in respect of the same contravention of that restriction or condition 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, or other action taken, in respect of the notified contravention.

#### **53F Penalties under section 53E**

- (1) This section applies where a person is given a notification under section 53E that specifies a proposed penalty.
- (2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (4) 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 53G which requires immediate action, or
  - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (5) The amount of a penalty specified under subsection (4) is to be such amount, not exceeding £20,000 per day, as OFCOM think—
  - (a) appropriate, and
  - (b) proportionate to the contravention in respect of which it is imposed.

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- (6) The amount of any other penalty specified under this section is to be such amount, not exceeding 10% 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.

### **53G Enforcement of notification under section 53E**

- (1) This section applies where—
- (a) a person has been given a notification under section 53E,
  - (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 on the person, or the suspension or revocation of the person's registration, or both, in accordance with the notification under section 53E, 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 restriction or condition specified in the notification under section 53E.
- (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 requirements of a kind mentioned in section 53E(2)(d), or may specify a period within which the person must comply with those requirements,
  - (d) may require the person to pay—
    - (i) the penalty specified in the notification under section 53E, 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 condition or restriction or remedy the consequences of the contravention, and
  - (e) may specify the period within which any such 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.

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- (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.

### 53H Meaning of “relevant amount of gross revenue”

- (1) The relevant amount of gross revenue for the purposes of section 53F, 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 the person's 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 the person's 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 the person's gross revenue.
- (2) The accounting period or periods referred to in subsection (1) are—
  - (a) every accounting period of the person 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 the person 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 restrictions or conditions subject to which the person is registered under section 53A, is a reference to so much of the person's gross revenue as is attributable to the provision of the dynamic spectrum access service to which the contravention 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 dynamic spectrum access 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 the person's 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—

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- (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) In this section—

“accounting period”, in relation to a person, means a period in respect of which accounts of the undertaking carried on by the person 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.

### **53I Requirement to provide information about gross revenue**

- (1) OFCOM may require a person to whom a notification has been given under section 53E to provide them with all such information as they may require for the purpose of ascertaining the person's gross revenue.
- (2) A demand for information required under this section must be contained in a notice given to the person from whom the information is required.
- (3) 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.
- (4) Sections 53K to 53M apply for the purposes of a requirement imposed under this section as they apply for the purposes of a requirement imposed under section 53J.

## *Information*

### **53J Provision of information to persons registered under section 53A**

- (1) OFCOM may require a person falling within subsection (2) to provide a person registered under section 53A with all such information as OFCOM consider necessary and proportionate for the purpose of enabling the registered person to avoid undue interference with wireless telegraphy.
- (2) The persons falling within this subsection are—
  - (a) a person who is using, or has established or used, a wireless telegraphy station, and
  - (b) a person who is using, or has installed or used, wireless telegraphy apparatus.
- (3) A demand for information required under this section must be contained in a notice given to the person from whom the information is required.
- (4) The notice must—
  - (a) describe the required information,
  - (b) specify the manner and form in which it is to be provided,

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- (c) specify when and (if appropriate) how frequently it is to be provided, and
- (d) specify to whom it is to be provided.

### **53K Notification of contravention of information requirements**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 53J, they may give the 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, and
  - (d) specifies any penalty which OFCOM are minded to impose in accordance with section 53L.
- (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 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.

### **53L Penalties under section 53K**

- (1) This section applies where a person is given a notification under section 53K that specifies a proposed penalty.
- (2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (4) 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 53M(4)(c) which requires immediate action, or



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- (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (5) The amount of a penalty specified under subsection (4) is to be such amount, not exceeding £20,000 per day, as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount of any other penalty specified under this section is to be such amount, not exceeding £2 million, as OFCOM determine to be both—
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.

### 53M Enforcement of notification under section 53K

- (1) This section applies where—
  - (a) a person has been given a notification under section 53K,
  - (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 53K, 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 53K.
- (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 53K, or may specify a period within which the person must comply with the requirement,
  - (d) may require the person to pay—
    - (i) the penalty specified in the notification under section 53L, 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
  - (e) may specify the period within which any such 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,

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- (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.”
- (2) In section 111(3) of that Act (exemptions from general restriction on disclosure), after paragraph (c) insert—
- “(ca) by OFCOM to a person registered under section 53A for the purpose of providing the dynamic spectrum access service in respect of which the person is registered;”.
- (3) In section 115(1) of that Act (general interpretation), at the appropriate place insert—
- ““dynamic spectrum access service” has the meaning given by section 53A;”.
- (4) In section 400(1) of the Communications Act 2003 (destination of fees and penalties) —
- (a) in paragraph (d), before “of that Act” insert “ or Part 2A ”, and
  - (b) after that paragraph insert—
    - “(da) an amount paid to OFCOM in respect of a fee charged under section 53D of that Act;”.
- (5) In Schedule 8 to that Act (decisions not subject to appeal)—
- (a) in paragraph 40(a), after “45” insert “ , 53A(7), 53D ”,
  - (b) in paragraph 41, for “or 24” substitute “ , 24 or 53D(6) ”, and
  - (c) in paragraph 43, omit the “or” after paragraph (a) and at the end of paragraph (b) insert “, or
    - (c) section 53H.”

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**Commencement Information**

**II** S. 8 in force at 31.7.2017 by S.I. 2017/765, reg. 2(c)

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