

Mobile Services Committee (MSC) Paper

Implementation of EC Directives for WT Act Licences

This note is for information.

Implementation

1. The Directive will be implemented into UK law on 25 July 2003. The Communications Bill aims achieve this for spectrum measures primarily through the following clauses (numbers based on the introductory print- which may soon change):

148 (UK plan for frequency authorisation),
159 (limitations on use),
160 (terms),
161 (exemptions),
164 (variation and revocation),
167 to 169 (enforcement) and
178 (undue interference).

2. If the Bill were to be delayed, then a Statutory Instrument will be made on these powers in the name of the Secretary of State. All the Powers will initially apply to the Secretary of State until OFCOM takes over by virtue of the transitional provisions (clause 393).

Key actions required before July

3. The most significant change for the Agency is the provisions of clause 159, which requires Orders (i.e. Regulations) to be made concerning limitations on the number of licences that may be granted. The Agency and our legal advisers are currently drafting the requirements for these regulations and we propose to consult on them (to issue before Easter). This action also links to the new Frequency Authorisation Plan, which we will publish. We will need to indicate the conditions under which licences are issued on a limited basis, which includes each frequency where we are open to receive licence applications which can only be issued to a set number of licensees or on a system such as first-come, first-served.

4. The consultation will enable comments to be made before the regulations are finalised to come into operation in July. We will need to give notice of changes thereafter. The Frequency Plan will indicate across the spectrum all frequencies open for specific type of application or for exempt use (unlike the allocation plans, which does not distinguish spectrum that is available for application). It is proposed that the plan will also indicate frequencies that are closed because licences are already fully awarded. These measures reflect the requirements of Articles 5 to 7 of the Directive.

Other changes

5. The Secretary of State/OFCOM will be specifically required to consider if licences are required on spectrum management grounds before introducing any more

products, failing which an exemption should be considered. The Agency has just put through a significant Exemption Order but expects to make more as new products arise. Licence terms (conditions) for current products are all being reviewed, and it is proposed to update terms on a number of classes. We are also introducing a generic simplified licence terms conditions booklet (printed and with on line version) for most of our “open for business” classes. Existing licences will be updated, although we will also announce the changes well in advance. The new terms will be aimed at simplification wherever possible. However this will not affect any licences awarded by competition, where any changes will only be as a result of consequent changes to the end of the T Act licensing regime, except by consent of the licensee or for any easing of conditions as a direct requirement of the Directives. We will need to issue notices to licensees when any licence conditions are amended, but the details need still to be finalised. As most of our licence conditions are solely related to spectrum management we do not anticipate many significant changes.

6. The changes to enforcement powers are in line with the current enforcement concordat. Changes on variation and revocation of licences are minor (e.g. a month is now a month rather than 28 days for giving notice of enforced changes). The meaning of “undue interference” in the 1949 Act will be amended. Interference will not be undue unless it is also “harmful” (as set out in the Directives and Radio Regulations).

7. Clause 166 of the Bill gives new powers under Article 11 of the Directive to gather additional information for statistical purposes from licensees. The provisions require a statutory notice and an annual statement to be made. It is likely that such a statement will not be made until after OFCOM comes into being, pending which these powers will not be used in the interim period.

Changes under the Framework Directive

8. The key immediate changes are the new provisions for handling disputes and appeals. These fall under clauses 180 to 191 of the Bill. The RA has recently completed a joint consultation exercise with OFTEL on disputes and the results are to be published jointly very shortly. In the interim period prior to OFCOM, the RA will handle any dispute applications on a case by case basis. Longer term we are looking to OFCOM to provide common facilities for administering them, although we will use our interference resolution resources to investigate any spectrum cases. On appeals it is proposed to have common procedures, involving the Competition Commission.

New facilities permitted by the Directives

9. The Directives permit member states to take other measures and it is proposed to use new provisions in the Bill to start to do this. The Framework Directive will permit trading to be introduced and it is proposed under the Bill to have OFCOM orders to introduce these. The first Order is likely to be in 2004.

10. In support of trading and for more general transparency, it is also intended to use the new powers of clause 165 to have a register of WT use. This will require further Orders to be made to specify the contents of the register.

This is linked to work currently being done by the access sub group of the MSC. It is not likely we/ OFCOM will be ready for the first Order until 2004.

Radiocommunications Agency
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