

## Appendix 2 – Ofcom’s duties and obligations in relation to setting the ALF

Yellow highlight = Not included in the ALF consultation

Ofcom’s duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
<b>Communications Act</b>					
Section 3(1) It shall be the <b>principal duty</b> of OFCOM, in carrying out their functions—	(a) to further the interests of citizens in relation to communications matters; and	3.20	Yes	-	
	(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.	3.20	Yes	-	
Section 3(2) The things which, by virtue of subsection (1), OFCOM are <b>required to secure</b> in the carrying out of their functions include, in particular, each of the following—	(a) the optimal use for wireless telegraphy of the electronic communications services	3.21	Yes	-	
	(b) the availability throughout the United Kingdom of a wide range of electronic communications services electro-magnetic spectrum	3.21	Yes	-	
	(c) the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests	3.21	No	Part omission – highlighted (Probably immaterial)	
Section 3(3) In performing their duties under subsection (1), OFCOM <b>must have regard</b> , in all cases, to—	(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed	3.22	Yes	-	
	(b) any other principles appearing to OFCOM to represent the best regulatory practice.	No	-	Omitted	

Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
Section 3(4) OFCOM <b><u>must also have regard</u></b> , in performing those duties, to such of the following as appear to them to be relevant in the circumstances—	(b) the desirability of promoting competition in relevant markets	3.23	Yes	-	
	(d) the desirability of encouraging investment and innovation in relevant markets	3.23	Yes	-	
	(e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom	3.23	Yes	-	
	(f) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it	3.23	Yes	-	
	(i) the needs of persons with disabilities, of the elderly and of those on low incomes	No	-	Omitted.	
	(k) the opinions of consumers in relevant markets and of members of the public generally	No	-	Omitted.	

Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
<p>Section 4 <b><u>Duties</u></b> for the purpose of fulfilling Community obligations.</p> <p>(1) This section applies to the following functions of OFCOM—</p> <p>(b) their functions under the enactments relating to the management of the radio spectrum</p> <p>(2) It <b><u>shall be the duty</u></b> of OFCOM, in carrying out any of those functions, to act in accordance with the six Community requirements (which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive and are to be read accordingly).</p>	<p>(3) The first Community requirement is a requirement to promote competition—</p> <p>(a) in relation to the provision of electronic communications networks and electronic communications services</p> <p>(b) in relation to the provision and making available of services and facilities that are provided or made available in association with the provision of electronic communications networks or electronic communications services;</p>	3.25	No	Simply states that Section 4 gives effect to Article 8	
	<p>Section 4(6) The fourth Community requirement is a requirement to <b><u>take account of the desirability</u></b> of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour—</p> <p>(a) one form of electronic communications network, electronic communications service or associated facility; or</p> <p>(b) one means of providing or making available such a network, service or facility, over another.</p>	3.25	No	States that Section 4 gives effect to Article 8	
	<p>Section 4(7) The fifth Community requirement is a requirement to encourage, <b><u>to such extent as OFCOM consider appropriate</u></b> for the purpose mentioned in subsection (8), the provision of network access and service interoperability.</p> <p>(8) That purpose is the purpose of securing—</p>	3.25	No	States that Section 4 gives effect to Article 8	

Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
	<p>(a) efficiency and sustainable competition [...]2 ; [...]3 [ (aa) efficient investment and innovation; and ] 3</p> <p>(b) the maximum benefit for the persons who are customers of communications providers and of persons who make [ associated facilities ] 4 available.</p>				
<b>Section 5</b> (2) It <b>shall be the duty</b> of OFCOM to carry out those functions in accordance with such general or specific directions as may be given to them by the Secretary of State.		3.31 – 3.34			
<b>Section 7</b> <b>Duty</b> to carry out impact assessments (1) This section applies where—	<p>(a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and</p> <p>(b) it appears to them that the proposal is important;</p> <p>but this section does not apply if it appears to OFCOM that the urgency of the matter makes it impracticable or inappropriate for them to comply with the requirements of this section.</p>	2.21	No	Ofcom has not followed the IA guidance	
7(3) Before implementing their proposal, OFCOM <b>must</b> either—	<p>(a) carry out and publish an assessment of the likely impact of implementing the proposal; or</p> <p>(b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.</p>	2.21	No		
7(4) An assessment under subsection (3)(a) must set out how, in OFCOM's opinion, the performance of their general duties (within the meaning of section 3) is secured or furthered by or in relation to what they propose.		TBA	TBA		
(5) An assessment carried out under this section— (a) <b>may</b> take such form, and (b) <b>must</b> relate to such matters, as OFCOM consider appropriate.		No	-	Omitted.	

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(6) In determining the matters to which an assessment under this section should relate, OFCOM <b><u>must have regard to</u></b> such general guidance relating to the carrying out of impact assessments as they consider appropriate.		No	-	Omitted	
(7) Where OFCOM publish an assessment under this section— (b) the published assessment <b><u>must be</u></b> accompanied by a statement setting out how representations may be made;		No	-		
Framework Directive					
Article 8 –	1 Member States <b><u>shall</u></b> take the <b><u>utmost account</u></b> of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities do likewise.	3.14	No		
	2. The national regulatory authorities <b><u>shall</u></b> promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by <i>inter alia</i> :	3.12	No	Part omission - highlighted	
	(a) <b><u>ensuring</u></b> that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality;	No	-	Omitted	
	(b) <b><u>ensuring</u></b> that there is no distortion or restriction of competition in the electronic communications sector,	3.12	Yes	-	

Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
	(d) <b>encouraging</b> efficient use <b>and ensuring the effective management</b> of radio frequencies	3.12	No	Part omission - highlighted	
	5. The national regulatory authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4, apply objective, transparent, non-discriminatory and proportionate regulatory principles by <i>inter alia</i> :	3.13	Yes	-	
	(a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods	No	-	Cf the purpose set out in s.2 of the Direction	
	(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;	3.13	Yes	-	
	(c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition;	No	-	-	
	(d) promoting efficient investment and innovation in new and enhanced infrastructures, <b>including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved;</b>	3.13	No	Part omission - highlighted	

Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
	(e) taking due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within a Member State;	No	-	Omitted	
Article 9	1 Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Articles 8 and 8a. They shall ensure that spectrum allocation used for electronic communications services and issuing general authorisations or individual rights of use of such radio frequencies by competent national authorities are based on objective, transparent, non-discriminatory and proportionate criteria.	3.15	Yes	-	
	2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in pursuit of benefits for the consumer such as economies of scale and interoperability of services.	3.16	No	Part omission – highlighted. Ofcom has added the words “of frequencies” where highlight begins	

Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
Article 13	Member States may impose fees for the rights of use of radio frequencies which reflect the need to ensure the optimal use of that resource. Fees must be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and must take into account the objectives in Article 8 of the Framework Directive.	3.16	Yes	-	
	<b>Fees for rights of use and rights to install facilities</b> Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies ...which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of Directive 2002/21/EC (Framework Directive).	3.16	No	Part omission - highlighted	
Recital 32	(32) In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market. This Directive is without prejudice to the purpose for which fees for rights of use are employed. Such fees may for instance be used to finance activities of national regulatory authorities that cannot be covered by administrative charges. Where, in the case of competitive or comparative selection procedures, fees for rights of use for radio frequencies consist entirely or partly of a one-off amount, payment arrangements should ensure that such fees do not in practice lead to selection on the basis of criteria unrelated to the objective of ensuring optimal use of radio frequencies. The Commission may publish on a regular basis benchmark studies with regard to best practices for the assignment of radio frequencies, the	3.17	No	Part omission - highlighted	



Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
	assignment of numbers or the granting of rights of way.				
Recital 33	(33) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is <b><u>objectively justified</u></b> . Such changes should be duly notified to all interested parties in good time, giving them adequate opportunity to express their views on any such amendments.	3.18	Yes	-	
<b>The Wireless Telegraphy Act</b>					
<b>Section 3 Duties of OFCOM when carrying out functions</b> 3(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;	No	-	Omitted	
	(b) the demand for use of the spectrum for wireless telegraphy; and	3.26	Yes	-	
	(c) the demand that is likely to arise in future for the use of the spectrum for wireless telegraphy.	3.26	Yes	-	
3(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;	No	-	Omitted	
	(b) the economic and other benefits that may arise from the	No	-	Omitted	

Ofcom's duties and obligations		Reference d?	Correctly referenced ?	Error with reference	
	use of wireless telegraphy;				
	(c) the development of innovative services; and	3.27	Yes	-	
	(d) competition in the provision of electronic communications services.	3.27	Yes	-	
3(3) Subsection (4) has effect in the case of OFCOM's radio spectrum functions, other than their functions under sections 13 and 22.		3.26, 3.27			
3(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.		No	-	Omitted	
<b>5 Directions of Secretary of State</b> 5(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.					
<b>Section 10 – Procedure</b> Schedule 1(6)(A) OFCOM may not revoke or vary a wireless telegraphy licence unless the proposed revocation or variation is objectively justifiable.		No	-	Omitted although discussed in context of CRF	
<b>12 Charges for grant of licence</b> (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).		3.28	Yes	-	

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12(2) The sums are–	(a) such sums as OFCOM may prescribe by regulations, or	3.28	Yes	-	
	(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.	3.28	Yes	-	
<b>13 Matters taken into account</b> (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.  [No. Ofcom appears to have misinterpreted the WTA. It must have regard to s.3 WTA06, not s.3 of the CA03. However where there is a conflict section 3 and 6 of CA03 prevails.]		3.29	No	Mischaracterised	
<b>The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010</b>					
<b>Purpose of Directions</b> 2. The Secretary of State gives these directions for the purposes of: ensuring the release of additional electromagnetic spectrum for use by providers of next generation wireless mobile broadband; allowing early deployment and maximising the coverage of those services; creating greater investment certainty for operators; and implementing Directive 2009/114/EC (1) and the Decision (2) on the liberalisation of frequencies in the 900MHz and 1800MHz bands.		No	-	Omitted	
<b>Licence fees</b> 6(1) After completion of the Auction OFCOM must revise the sums prescribed by regulations under section 12 of the WTA for 900MHz and 1800MHz licences so that they reflect the full market value of the frequencies in those bands.		3.33	Yes	-	
(2) In revising the sums prescribed OFCOM must have particular regard to the sums bid for licences in the Auction.		3.33	Yes	-	

Ofcom's duties and obligations	Reference d?	Correctly referenced ?	Error with reference	
<p><b>Competition assessment</b></p> <p>8. (1) As soon as reasonably practicable OFCOM must assess likely future competition in markets for the provision of mobile electronic communications services.</p> <p>(2) The competition assessment shall be in respect of the future competitiveness of those markets after the conclusion of the Auction, taking into account possible effects of the Auction.</p> <p>(3) The competition assessment shall include consideration of the potential for new entry into those markets.</p> <p>(4) In the light of the competition assessment OFCOM must, where they think fit, put in place appropriate and proportionate measures which will promote competition in those markets after the conclusion of the Auction.</p> <p>(5) The measures to promote competition may include rules governing the Auction.</p>	2.3	-	-	