

Draft guidelines on the determination of the amount of statutory penalties imposed by Ofcom

Consultation document

This document seeks your comments on draft penalty guidelines that Ofcom proposes to follow in setting the amount of penalties imposed on persons found to have committed a breach of their statutory obligations. The deadline for comments is **24 October 2003**.

Contents

Section		Page
1	Executive Summary	1
2	Ofcom's draft penalty guidelines	2
3	Questions for consultees	4
4	Regulatory impact	4
5	Next steps	4
Annex A	Section 392 of the Communications Act 2003	5
Annex B	Ofcom's powers to impose penalties	6
Annex C	Ofcom's seven consultation tests	18

1. Executive Summary

- 1.1 This document seeks the views of interested parties on a draft statement of the guidelines Ofcom proposes to follow in determining the amount of statutory penalties it may impose. Ofcom is required to prepare a statement by section 392 of the Communications Act 2003, and invites comments on the draft by 24 October 2003.
- 1.2 The statement explains that in the case of any contravention, Ofcom will consider all relevant circumstances, as well as any representations made by the person in breach. The statement sets out general criteria that Ofcom is likely to apply in setting the starting figure of any penalty, and specific criteria that may be used (depending on the nature of the contravention) to adjust that figure. The statement also includes an indicative list of factors that Ofcom considers may tend to increase or reduce the level of any penalty.
- 1.3 In the absence of experience gained from dealing with actual cases, the guidelines are necessarily broadbrush. However, as the statement points out, we expect to review the guidelines from time to time in the light of experience.
- 1.4 The statement includes an annex summarising Ofcom's powers to impose penalties, and describing the maximum penalties. The statement does not cover penalties that may be imposed by the courts for breaches of the Wireless Telegraphy Acts. However, if and when provisions to impose fixed penalties for certain wireless telegraphy offences are implemented, as provided for in section 180 and Schedule 6 of the Communications Act, Ofcom would expect to review the guidelines to see if it was appropriate to apply them in the case of wireless telegraphy offences.
- 1.5 In addition, the statement does not cover penalties that may be imposed under the Competition Act, on which Ofcom will be producing separate guidelines. As part of this process, Ofcom will be considering with the Office of Fair Trading what its competition guidelines and its penalty guidelines should say about the penalties that may apply in cases where there is a choice to be made about whether to take action under sector specific powers, or under the Competition Act.
- 1.6 Views and comments on any of the points discussed in the paper are welcome. Please call, email or write to:

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2. Ofcom's draft penalty guidelines

The proposed text of the penalty guidelines is set out in paragraphs 1 to 11 below.

"Statutory background

1. Section 392 of the Communications Act 2003 ('the Act') requires Ofcom to prepare and publish a statement containing the guidelines they propose to follow in determining the amount of penalties imposed by them under the Act or any other enactment apart from the Competition Act 1998.
2. Ofcom's various powers to impose financial penalties are summarised in the second column of Annex B. The statutory maximum penalty for each type of contravention is shown in the third column of the Annex.
3. In accordance with section 392(4) of the Act, Ofcom is consulting with the Secretary of State and appropriate persons about this statement. In addition, under section 392(5) of the Act, Ofcom will consult the Secretary of State as to the manner of publication.
4. By virtue of section 392(6) of the Act, Ofcom must have regard to the statement for the time being in force when setting the amount of any penalty under this Act or any other enactment (apart from the Competition Act 1998).

General criteria

5. The amount of any penalty must be appropriate and proportionate to the contravention in respect of which it is imposed. In addition Ofcom must have regard to any representations made to them by the person in breach. Accordingly, Ofcom, in setting the level of penalty, will consider all relevant circumstances.
6. In general, Ofcom is likely first to consider the following factors in determining the starting figure of any penalty:
 - the seriousness of the contravention;
 - any precedents set by previous cases; and
 - the need to ensure that the threat of penalties will act as a sufficient incentive to comply.

Specific criteria which may be relevant depending on the contravention

7. Certain specific criteria may be relevant to adjust the starting figure of any penalty depending on the type of contravention. This may include, but would not necessarily be limited to:
 - any gain (financial or otherwise) made by the person in breach (or any connected person);
 - the degree of harm caused, or increased cost incurred by consumers or other market participants;

- size and turnover of the regulated body;
- the extent and nature of third party responsibility for the breach; and
- the duration of the contravention.

Additionally, in the case of content-related breaches by broadcasters:

- audience expectations; and
- scheduling.

Factors tending to lead to an increase in the level of any penalty

8. This may include, but would not necessarily be limited to:
- repeated contraventions by the same person;
 - continuation of the contravention by the person concerned after either becoming aware of the contravention or being notified of an investigation by Ofcom;
 - the degree of wilfulness or intentionality of the contravention;
 - the complicity of senior management in any contravention; and
 - the ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent contravention by the person concerned or other persons in the same group.

Factors tending to decrease the level of any penalty

9. This may include, but would not necessarily be limited to:
- the extent and timeliness of any steps taken to comply with the contravention in question, and any steps taken for remedying the consequences of the contravention; and
 - co-operation with Ofcom's investigation.

Final amount of penalty

10. Having taken regard of any representations the person may wish to make and having considered the factors listed above (to the extent that they are relevant) and any other circumstances relevant to the particular case under consideration, Ofcom will determine an appropriate and proportionate penalty. In doing so it will ensure that the amount does not exceed the maximum penalty for the particular type of contravention.

Revision of the statement of policy

11. Section 392(2) of the Act provides that Ofcom may from time to time revise their statement as they think fit. Any such alterations must be the

subject of consultation with the Secretary of State and other such persons, as Ofcom considers appropriate. This statement will be reviewed in the light of experience in applying it over time. In particular, the guidelines will be reviewed prior to the implementation of fixed penalties in relation to offences under the Wireless Telegraphy Act 1949 as provided for in section 180 (Schedule 6) to the Act.”

3. Questions for consultees

- 3.1 Ofcom would welcome views on the following questions:
- a. are the factors that Ofcom should take into account in determining the level of penalty appropriate, either in relation to all persons, or to specific categories of person, such as broadcasters?
 - b. are there other factors that Ofcom should take into account in determining the appropriate level of penalty, either in relation to all persons, or to specific categories of person, such as broadcasters?
- 3.2 Ofcom will also consider any other comments that consultees consider may be raised by the guidelines, provided that these comments relate to the statutory purpose of the guidelines, as set out in section 392 (see Annex A).

4. Regulatory impact

- 4.1 Ofcom does not consider that it is necessary or useful to assess the regulatory impact of the guidelines, since the impact on individual persons of the application of the guidelines will depend on Ofcom’s view of the circumstances of each case.

5. Next steps

- 5.1 Unless consultees request otherwise, Ofcom will publish any responses (or a summary of them, as appropriate) on its website. It will consider the responses carefully, and decide whether to make any changes to the draft guidelines as a result. It will then consult the Secretaries of State for Trade & Industry, and for Culture, Media & Sport, both as to the contents of the guidelines, and the way in which they should be published.
- 5.2 In the light of any comments from the Secretaries of State, Ofcom will aim to finalise the guidelines before the end of the year, in order that they can be applied to any decisions taken by Ofcom from the date on which it is given regulatory powers, which is expected to be 29 December 2003.

Annex A

Section 392 of the Communications Act 2003

"

1. It shall be the duty of OFCOM to prepare and publish a statement containing the guidelines they propose to follow in determining the amount of penalties imposed by them under provisions contained in this Act or any other enactment apart from the Competition Act 1998 (c.41).
2. OFCOM may from time to time revise that statement as they think fit.
3. Where OFCOM make or revise their statement under this section, they must publish the statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
4. Before publishing a statement or revised statement under this section OFCOM must consult both –
 - a. the Secretary of State, and
 - b. such other persons as they consider appropriateabout the guidelines they are proposing to include in the statement.
5. Before determining how to publish a statement or revised statement under this section OFCOM must consult the Secretary of State.
6. It shall be the duty of OFCOM, in determining the amount of any penalty to be imposed by them under this Act or any other enactment (apart from the Competition Act 1998 (c.41)) to have regard to the guidelines contained in the statement for the time being in force under this section.
7. References in this section to penalties imposed by OFCOM under provisions contained in this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3)."

Annex B - Ofcom's powers to impose penalties⁽¹⁾

Offence	Powers and duties	Maximum penalty
Communications Act 2003		
Contravention of requirement for advance notification to Ofcom	<p>Section 37(2) – Ofcom may impose a penalty on the notified provider payer if he –</p> <ul style="list-style-type: none"> a. has, in one or more respects notified, been in contravention of section 33; and b. has not, during the period allowed under section 35, provided Ofcom with all the information which he should have provided to remedy the contravention. <p>Section 37(5) – Ofcom may impose a penalty on the notified provider if he is contravening, or has contravened an enforcement notification issued under section 36 in relation to failure to provide advance notification.</p>	<p>Such amount, not exceeding, £10,000⁽²⁾, as Ofcom determine to be appropriate, and proportionate to the contravention. In making that determination Ofcom must have regard to –</p> <ul style="list-style-type: none"> a. any representations made to them by the notified provider; and b. any steps taken by him towards complying with the obligations under section 33.
Non-payment of charges	<p>Section 41(2) – Ofcom may impose a penalty on the notified charge payer if he –</p> <ul style="list-style-type: none"> a. has, in one or more respects notified, been in contravention of a requirement to pay an administrative charge fixed under section 38; and b. has not, during the period allowed under section 40, paid the whole of the notified amount outstanding. 	<p>Such amount, not exceeding twice the amount of the charge fixed for the relevant year, as Ofcom determine to be appropriate, and proportionate to the contravention. In making that determination Ofcom must have regard to –</p> <ul style="list-style-type: none"> a. any representations made to them by the notified charge payer; and b. any steps taken by him towards paying the amounts that he was notified under section 40 were outstanding.

<p>Contravention of conditions of entitlement to provide a network or service etc</p>	<p>Section 96(2) – Ofcom may impose a penalty on the notified provider if he –</p> <ol style="list-style-type: none"> a. has, in one or more respects notified, been in contravention of a condition specified in the notification under section 94; and b. has not, during the period allowed under that section, taken the steps Ofcom consider appropriate – <ol style="list-style-type: none"> i. for complying with the notified condition; and ii. for remedying the consequences of the notified contravention of that condition. <p>Section 96(5) – Ofcom may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification given under section 95 in respect of the notified contravention.</p>	<p>Such amount, not exceeding 10% of the turnover of the notified provider’s relevant business for the relevant period, as Ofcom determine to be appropriate, and proportionate to the contravention in respect of which it is imposed. In making that determination Ofcom must have regard to –</p> <ol style="list-style-type: none"> a. any representations made to them by the notified provider; and b. any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94; and c. any steps taken by him for remedying the consequences of those contraventions.
<p>Contravention of code restrictions</p>	<p>Section 112 (2) – Ofcom may impose a penalty on the notified provider if he –</p> <ol style="list-style-type: none"> a. has in contravention, in any of the respects notified, of a requirement specified in the notification under section 110; and b. has not, during the period allowed that section, taken the steps as they consider appropriate <ol style="list-style-type: none"> i. for complying with the notified requirement; and ii. for remedying the consequences of the notified contravention of that condition. <p>Section 112(5) – Ofcom may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification.</p>	<p>Such amount, not exceeding £10,000⁽²⁾, as Ofcom determine to be appropriate, and proportionate to the contravention in respect of which it is imposed. In making that determination Ofcom must have regard to –</p> <ol style="list-style-type: none"> a. any representations made to them by the notified provider; b. any steps taken by him towards complying with the requirements under section 110; c. any steps taken by him for remedying the consequences of those contraventions.

<p>Contravention of conditions regulating premium rate services</p>	<p>Section 123(1) – Ofcom may impose a penalty if a premium rate service provider has contravened a condition set under section 20. Sections 94 to 96 apply in relation to a contravention of conditions set under section 120 as they apply in relation to a contravention of a condition set under section 45.</p>	<p>Such amount, not exceeding £100,000⁽²⁾, as Ofcom determine to be appropriate, and proportionate to the contravention in respect of which it is imposed. In making that determination Ofcom must have regard to –</p> <ul style="list-style-type: none"> a. any representations made to them by the notified provider; b. any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94 (as applied); c. any steps taken by him for remedying the consequences of those contraventions.
<p>Persistent misuse of network or service</p>	<p>Section 130(2) – Ofcom may impose a penalty on the notified misuser if he has, in one or more notified respects, persistently misused an electronic communications network or electronic communications service.</p> <p>Section 130(3) – Ofcom may also impose a penalty on the notified misuser if he has contravened a requirement in an enforcement notification given in respect of the notified misuse.</p>	<p>Such amount, not exceeding £5,000⁽²⁾, as Ofcom determine to be appropriate, and proportionate to the misuse in respect of which it is imposed. In making that determination Ofcom must have regard to –</p> <ul style="list-style-type: none"> a. any representations made to them by the notified provider; b. any steps taken by him for securing that his misuse is brought to an end and is not repeated; and c. any steps taken by him for remedying the consequences of the notified misuse.

Penalties for contravention of information requirements	<p>Section 139(2) – Ofcom may impose a penalty on the notified person if –</p> <ul style="list-style-type: none"> a. they are satisfied that he has, in one or more of the respects notified, been in contravention of a requirement notified under section 138; b. has not, during the period allowed under that section, complied with the notified requirement; and c. no proceedings for an offence under section 144 have been brought against the notified person in respect of the contravention. 	<p>Such amount, not exceeding £50,000⁽²⁾, as Ofcom determine to be appropriate, and proportionate to the contravention in respect of which it is imposed. In making that determination Ofcom must have regard to –</p> <ul style="list-style-type: none"> a. any representations made to them by the notified person; and b. any steps taken by him towards complying with the requirements contraventions of which have been notified to him under section 138.
Contraventions by general multiplex licence holders (special procedure)	<p>Section 175(1) – Ofcom may impose a penalty on a person if –</p> <ul style="list-style-type: none"> a. that person is or has been in contravention in any respect of terms, provisions or limitations of a general multiplex licence; b. the contravention relates to terms, provisions or limitations falling within section 1(2A)(b) or (c) of the Wireless Telegraphy Act 1949 (terms, provisions or limitations about service content); 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 the Act have been brought against that person. 	<p>The greater of £250,000 or 5% of the relevant amount of gross⁽³⁾ revenue.</p>
Contraventions by the BBC	<p>Section 198(3) – The powers that may be conferred on Ofcom by the BBC Charter or an agreement between the BBC and the Secretary of State include power, to such extent as the agreement may provide, to impose penalties on the BBC in respect of contraventions of the agreement or of provisions of part 3 of the Communications Act.</p>	<p>£250,000⁽²⁾</p>

Contravention of licence condition or direction by a television licensable content service licensee.	<p>Section 237(1) – If Ofcom is satisfied that the holder of a licence to provide a television licensable content service –</p> <ol style="list-style-type: none"> has contravened a condition of the licence, or has failed to comply with a direction given by Ofcom under the Communications Act 2003 or the Broadcasting Acts of 1990 and 1996, <p>they may serve on him a notice requiring him to pay, within a specified period, a specified penalty.</p>	The greater of £250,000 ⁽²⁾ ; or 5% of the qualifying revenue ⁽³⁾ for the licence holder's last complete accounting period falling within the period for which his licence has been in force.
Contravention of a proscription order for unacceptable foreign television and radio services	<p>Section 332 (1) – Ofcom may impose a penalty on a person who contravenes a requirement imposed on him by or under section 331.</p> <p>Section 332(2) – Before imposing a penalty on a person under this section Ofcom must give him a reasonable opportunity of making representations to them about their proposal to impose a penalty.</p>	<p>Such amount, not exceeding £5,000⁽²⁾, as Ofcom determine to be appropriate, and proportionate to the contravention in respect of which it is imposed. In making that determination Ofcom must have regard to –</p> <ol style="list-style-type: none"> any representations made to them by the person notified under section 331; any steps taken by him for complying with the requirements imposed on him under that section.
Imposition of penalties on the Welsh Authority	Section 341(2) – If Ofcom is satisfied that there has a contravention of a requirement to which this section applies, it may serve on the Welsh Authority a notice requiring the Authority, within the specified period, to pay Ofcom a specified penalty. Ofcom is not to serve a notice on the Welsh Authority under this section unless it has been given a reasonable opportunity of making representations to Ofcom about matters appearing to Ofcom to provide grounds for the service of the notice.	£250,000 ⁽²⁾ .

Offence	Powers and duties	Maximum penalty
Broadcasting Act 1990 (as amended by the Communications Act 2003)		
Failure to start providing a Channel 3 service.	Section 18 (1) & (3) – if someone who has been granted a licence indicates before the licence comes into force that he does not intend to provide the service, or if Ofcom is satisfied that this is likely to be the case, Ofcom shall revoke the licence and serve a notice requiring a penalty to be paid.	The greater of £500,000 ⁽²⁾ or 7% of the qualifying revenue for the relevant accounting period (or imputed revenue where there is not a complete accounting period).
Channels 3, 4 and 5 – failure to comply with a licence condition or direction from Ofcom.	Section 41(1) – If Ofcom is satisfied that a Channel 3, 4 or 5 licensee has failed to comply with a licence condition or a direction made by Ofcom under the Communications Act 2003 or the Broadcasting Acts of 1990 and 1996, Ofcom may require the licensee to pay a penalty, or reduce the term of the licence. Section 42 – if Ofcom is satisfied that such a contravention would warrant revocation if not remedied, it may serve a notice requiring remedial action, and if this is not taken to its satisfaction, revoke the licence.	5% of qualifying revenue for the last complete accounting period falling within the period for which the licence has been in force, or 5% of the imputed revenue if the first accounting period has not been completed. Ofcom may also revoke the licence.
Restricted (Television) Service – failure to comply with a licence condition or direction from Ofcom.	Section 42B – extends provisions of sections 40, 41 & 42 (see above) to Restricted Service Licensees.	The greater of £250,000 ⁽²⁾ or 5% of qualifying revenue for the last complete accounting period falling within the period for which the licence has been in force, or 5% of the imputed revenue if the first accounting period has not been completed. Ofcom may also revoke the licence.

Failure to start providing an Additional (Television) Service	Section 51(5) – if someone who has been granted an Additional (Television) Services licence indicates before the licence comes into force that he does not intend to provide the service, or if Ofcom is satisfied that this is likely to be the case, Ofcom shall revoke the licence.	Revocation of the licence.
Additional (Television) Services – failure to comply with a licence condition or direction from Ofcom.	Section 55(1) - If Ofcom is satisfied that an Additional (Television) Services licensee has failed to comply with a licence condition or a direction made by Ofcom under the Broadcasting Act 1990, Ofcom may require the licensee to pay a penalty, or reduce the term of the licence. The provisions of section 42 are also applied, allowing Ofcom to revoke a licence where failure to remedy deficiencies would warrant such action.	5% of qualifying revenue for the last complete accounting period falling within the period for which the licence has been in force, or 5% of the imputed revenue if the first accounting period has not been completed. Ofcom may also reduce the term of a licence or revoke it.
Failure to start providing a national radio service or corresponding simulcast service.	Section 101(1) – If someone who has been granted a national radio licence indicates before the licence comes into force that he does not intend to provide the service or a corresponding simulcast service, or if Ofcom is satisfied that this is likely to be the case, Ofcom shall revoke the licence and impose a financial penalty.	The greater of £250,000 ⁽²⁾ or 7% of qualifying revenue for the last complete accounting period falling within the period for which the licence has been in force, or 7% of the imputed revenue if the first accounting period has not been completed. Ofcom shall also revoke the licence.

<p>Radio Services – failure to comply with a licence condition or direction from Ofcom.</p>	<p>Section 110 (1) – If Ofcom is satisfied that a radio services licensee (whether national, local or restricted) has failed to comply with a licence condition or a direction made by Ofcom under the Broadcasting Act 1990, Ofcom may impose a financial penalty or reduce the term of a licence. (In addition, or as alternative, Ofcom may require the licensee to include in its service a correction or statement of findings (or both), by virtue of section 109(1) ⁽⁴⁾.</p> <p>Section 111(1) – If Ofcom is satisfied that such a contravention would warrant revocation if not remedied, it may serve a notice requiring remedial action, and if this is not taken to its satisfaction, revoke the licence.</p>	<p>£250,000⁽²⁾ or, for national licences, the greater of £250,000⁽²⁾ or 5% of qualifying revenue for the last complete accounting period falling within the period for which the licence has been in force, or 5% of the imputed revenue if the first accounting period has not been completed. Ofcom may also reduce the term of a licence or revoke it.</p>
<p>Additional (Radio) Service- failure to comply with a licence condition or direction from Ofcom.</p>	<p>Section 120(1) – If Ofcom is satisfied that an Additional (Radio) Services licensee has failed to comply with a licence condition or a direction made by Ofcom under the Broadcasting Act 1990, Ofcom may require the licensee to pay a penalty, or reduce the term of the licence. The provisions of section 111 are also applied, allowing Ofcom to revoke a licence where failure to remedy a contravention would warrant such action.</p>	<p>5% of qualifying revenue for the last complete accounting period falling within the period for which the licence has been in force, or 5% of the imputed revenue if the first accounting period has not been completed. Ofcom may also revoke the licence.</p>

Offence	Powers and duties	Maximum penalty
Broadcasting Act 1996 (as amended by the Communications Act 2003)		
Television Multiplex Service licensees – failure to start providing the service.	Section 11(1) – If someone who has been granted a licence indicates before the licence comes into force that he does not intend to provide the service, or if Ofcom has reasonable grounds for believing that this is likely to be the case, Ofcom shall revoke the licence and serve a notice requiring a penalty to be paid.	The greater of £500,000 ⁽²⁾ or 7% of the actual or estimated multiplex revenue for the relevant accounting period falling within the period for which his licence has been in force.
Television Multiplex Service – failure to comply with a licence condition or direction from Ofcom.	<p>Section 17(1) – If Ofcom is satisfied that a Television Multiplex Service licensee has failed to comply with a licence condition or a direction made by Ofcom under Part 1 of the Broadcasting Act 1996, Ofcom may require the licensee to pay a penalty, or reduce the term of the licence.</p> <p>Section 42 of the Broadcasting Act 1990 is applied, allowing Ofcom to revoke the licence if the licensee fails to remedy a contravention that would justify revocation.</p>	The greater of £250,000 ⁽²⁾ or 5% of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force, or 5% of the imputed revenue if the first accounting period had not been completed. Ofcom may also reduce the term of the licence by up to two years, or revoke the licence.
Digital Programme Service – failure to comply with a licence condition or direction from Ofcom.	Section 23(1) – If Ofcom is satisfied that a Digital Programme Services licensee has failed to comply with a licence condition or a direction made by Ofcom under Part 1 of the Broadcasting Act 1996, Ofcom may require the licensee to pay a penalty, or terminate the licence.	The greater of £250,000 ⁽²⁾ or 5% of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force, or 5% of the imputed revenue if the first accounting period had not been completed. Ofcom may also set a date for the early termination of the licence, no earlier than one year after the issue of a notice.

<p>Digital Additional (Television) Services – failure to comply with a licence condition or direction from Ofcom.</p>	<p>Section 27(1) – If Ofcom is satisfied that a Digital Additional Services (Television) licensee has failed to comply with a licence condition or a direction made by Ofcom under the Broadcasting Act 1996, Ofcom may require the licensee to pay a penalty, or terminate the licence early.</p> <p>Section 42 of the Broadcasting Act 1990 is applied, allowing Ofcom to revoke the licence if the licensee fails to remedy a contravention that would justify revocation.</p>	<p>The greater of £250,000⁽²⁾ or 5% of the aggregate amount of the shares of multiplex revenue attributable to the licensee in relation to multiplex services in respect of the relevant accounting period, or if the first accounting period is not complete, the amount estimated by Ofcom. Ofcom may also set a date for the early termination of the licence, no earlier than one year after the issue of a notice.</p>
<p>Radio Multiplex - failure to start providing the service</p>	<p>Section 53(1) – If someone who has been granted a licence indicates before the licence comes into force that he does not intend to provide the service, or if Ofcom has reasonable grounds to believe that this is likely to be the case, Ofcom shall revoke the licence and serve a notice requiring a penalty to be paid.</p>	<p>£250,000⁽²⁾ or, for a national radio multiplex, the greater of £250,000 or 7% of the estimated multiplex revenue for the first accounting period.</p>
<p>Radio Multiplex– failure to comply with a licence condition or direction from Ofcom.</p>	<p>Section 59(1) – If Ofcom is satisfied that a Radio Multiplex licensee has failed to comply with a licence condition or a direction made by Ofcom under the Broadcasting Act 1996, Ofcom may require the licensee to pay a penalty, or terminate the licence early.</p> <p>Section 111 of the Broadcasting Act 1990 is applied, allowing Ofcom to revoke the licence if the licensee fails to remedy a contravention that would justify revocation.</p>	<p>The greater of £250,000⁽²⁾ or 5% of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force, or 5% of the imputed revenue if the first accounting period has not been completed. Ofcom may also set a date for the early termination of the licence, no earlier than one year after the issue of a notice, or revoke the licence.</p>

<p>Digital Sound Programme Services – failure to comply with a licence condition or direction from Ofcom.</p>	<p>Section 62(1) – If Ofcom is satisfied that a Digital Sound Programme Services licensee (whether national or local) has failed to comply with a licence condition or a direction made by Ofcom under the Broadcasting Act 1996, Ofcom may require the licensee to pay a penalty, or suspend the licence for a period not exceeding six months.</p> <p>Section 111 of the Broadcasting Act 1990 is applied, allowing Ofcom to revoke the licence if the licensee fails to remedy a contravention that would justify revocation.</p>	<p>In the case of a national licence, the greater of £250,000⁽²⁾ or 5% of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force, or 5% of the imputed revenue if the first accounting period has not been completed.</p> <p>In the case of a local licence, £250,000.</p> <p>Ofcom may also suspend a national or local licence for a specified period of no more than six months, or revoke the licence.</p>
<p>Digital additional services on sound frequencies – failure to comply with a licence condition or direction from Ofcom.</p>	<p>Section 66(1) – If Ofcom is satisfied that a Digital Additional Services licensee has failed to comply with a licence condition or a direction made by Ofcom under the Broadcasting Act 1996, Ofcom may require the licensee to pay a penalty, suspend the licence for a period not exceeding six months, or terminate the licence.</p> <p>Section 111 of the Broadcasting Act 1990 is applied, allowing Ofcom to revoke the licence if the licensee fails to remedy a contravention that would justify revocation.</p>	<p>The greater of £250,000⁽²⁾ or 5% of the aggregate amount of multiplex revenue attributable to him in respect of the last complete accounting period, or 5% of the imputed revenue if the first accounting period has not been completed.</p> <p>Ofcom may also suspend the licence for a specified period not exceeding six months, or set a date for the early termination of the licence, no earlier than one year after the issue of a notice, or revoke the licence.</p>

Notes

1. The summary in this table is intended to as a guide to the legislation and is not intended to provide a definitive interpretation.
2. These maximum amounts may be amended by the Secretary of State by order.
3. The meaning of the terms 'qualifying revenue' and 'gross revenue' and the methodologies for determining or estimating them vary from one licence to another, and should be interpreted by reference to the legislation.
4. The Communications Act amends sections 40 and 109 of the Broadcasting Act 1990 to allow Ofcom, where it is satisfied that a Broadcasting Act licensee has contravened the conditions of its licence, to require it to include a correction or a statement of findings (or both) in its service.

Annex C - Ofcom's seven consultation tests

When it conducts a written consultation, Ofcom will:

1. **Hold discussions with stakeholders before issuing a major consultation document – so that Ofcom's thinking is subject to an early sense-test. If this is not possible, an open meeting to explain the proposals will be held soon after publication.**
We do not think that the nature of the issue being consulted upon justifies prior discussions with stakeholders, or an open meeting. However, if stakeholders ask for a meeting, we shall consider the request.
2. **Be clear about who is being consulted, why, on what questions and for how long.**
We are conducting a public consultation, so anyone interested can respond. However, the consultation will be of particular relevance to providers of electronic communications networks, services and associated facilities, as well as broadcasters and content providers.
3. **Make the document as simple and concise as possible – with a summary of no more than 2 pages - and make it easy to respond to. This may involve issuing a shorter version aimed at hard-to-reach groups, like SMEs.**
Given the brevity of this document, we believe that consultees will find it easy to understand and respond to.
4. **Allow 10 weeks for responses, other than on dispute resolution.**
We plan a shorter consultation period of five weeks, so that the guidelines can be put in place by the time Ofcom is given regulatory functions.
5. **Analyse responses with care and an open mind. This involves giving reasons for subsequent decisions, and an account of the views expressed.**
Unless consultees specifically request confidentiality, we shall publish all responses, or a summary of them, as appropriate, on our website. Ofcom will also publish its response to the points raised when publishing the final version of the guidelines, and will post both on its website.
6. **Monitor and evaluate consultations, and designate a consultation champion – an evangelist within Ofcom for better consultation and reach out, and a contact point for comments on our process.**
In the first instance, consultees with any comments on the consultation process are invited to contact Peter Bourton (contact details in paragraph 1.6 of the Executive Summary). However, if you do not get a satisfactory response, or would like to make points applying generally to the way in which Ofcom carries out consultations, please contact Philip Rutnam, Partner, Competition and Strategic Resources, by e-mail at philip.rutnam@ofcom.org.uk, or by phone on 020 7981 3585 (Ofcom) or 020 7634 8811 (Ofcom).
7. **Explain why Ofcom is departing from any of these tests if it has to – for example, because of urgency or confidentiality. If a shorter period is required, Ofcom will draw this to the attention of stakeholders, as a red flag item.**
Ofcom has decided to conduct a shorter consultation period of five weeks, because of the importance of ensuring that guidelines are in place before Ofcom is vested with its regulatory powers on 29 December 2003.