



# Broadcasting Act 1990

## 1990 CHAPTER 42

An Act to make new provision with respect to the provision and regulation of independent television and sound programme services and of other services provided on television or radio frequencies; to make provision with respect to the provision and regulation of local delivery services; to amend in other respects the law relating to broadcasting and the provision of television and sound programme services and to make provision with respect to the supply and use of information about programmes; to make provision with respect to the transfer of the property, rights and liabilities of the Independent Broadcasting Authority and the Cable Authority and the dissolution of those bodies; to make new provision relating to the Broadcasting Complaints Commission; to provide for the establishment and functions of a Broadcasting Standards Council; to amend the Wireless Telegraphy Acts 1949 to 1967 and the Marine, &c., Broadcasting (Offences) Act 1967; to revoke a class licence granted under the Telecommunications Act 1984 to run broadcast relay systems; and for connected purposes. [1st November 1990]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Extent Information

**E1** For extent see [s. 204\(3\)-\(5\)](#)

### Modifications etc. (not altering text)

**C1** Act: specified provisions extended (Guernsey) (with modifications) (13.2.1991) and further specified provisions extended (Guernsey) (1.4.1991) by [S.I. 1991/191, art. 3, Sch.](#)  
Act: specified provisions extended (Jersey) (with modifications) (13.2.1991) and further specified provisions extended (Jersey) (1.4.1991) by [S.I. 1991/193, art. 3, Sch.](#)  
Act: specified provisions extended (Guernsey) (with modifications) (1.8.1991) by [S.I. 1991/1709, art. 3, Sch.](#)

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- Act: specified provisions extended (Jersey) (with modifications) (1.8.1991) by S.I. 1991/1710, art. 3, **Sch.**
- C2** Act: definition of "relevant programme" applied (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 53(5), **Sch. 6 para 6(13)**; S.I. 1992/333, art. 2(2), **Sch. 2**
- C3** By Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(1), **Sch. 12 para. 23**; S.I. 1991/2208, art. 2(1), **Sch. 1** it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, art. 2(2), **Sch. 2**) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.
- C4** Act amended (1.4.1997) by 1996 c. 55, s. 124(3); S.I.1997/1005, **art. 4**
- C5** Act to be construed with specified provisions of 1996 c. 55 (1.10.1996 for certain purposes and otherwise 1.4.1997) by virtue of s. 147(2) of that 1996 Act; S.I. 1996/2120, art. 4, **Sch. 1**; S.I. 1997/1005, **art. 4**

## <sup>F1</sup>PART I

### INDEPENDENT TELEVISION SERVICES

#### Textual Amendments

- F1** Pt I (ss.1-71) applied (1.10.1996) by 1988 c. 48, s.72, as replaced 1996 c. 55, s. 138, **Sch. 9 para. 1**; S.I. 1996/2120, art. 4, **Sch. 1**

## CHAPTER 1

### REGULATION BY COMMISSION OF TELEVISION SERVICES GENERALLY

#### *Establishment of Independent Television Commission*

#### **1 The Independent Television Commission.**

- (1) There shall be a commission to be called the Independent Television Commission (in this Part referred to as "the Commission").
- (2) The Commission shall consist of—
  - (a) a chairman and a deputy chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than eight nor more than ten, as he may from time to time determine.
- (3) Schedule 1 to this Act shall have effect with respect to the Commission.

#### Modifications etc. (not altering text)

- C6** S. 1(2)(b): functions to be exercised (1.7.1999) subject to agreement of or consultation with the Scottish Ministers by virtue of S.I. 1999/1750, arts. 1, 4, **Sch. 3**; S.I. 1998/3178

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## Function of Commission

### 2 Regulation by Commission of provision of television services.

(1) It shall be the function of the Commission to regulate, in accordance with this Part [F<sup>2</sup> and Part I of the Broadcasting Act 1996], the provision of the following services, namely—

- (a) television programme services [F<sup>3</sup>(other than satellite television services)] which are provided from places in the United Kingdom by persons other than the BBC and the Welsh Authority, F<sup>4</sup>. . .
- [F<sup>5</sup>(aa) satellite television services (as defined by section 43(1)) provided by persons other than the BBC and the Welsh Authority,]
- (b) additional services which are provided from places in the United Kingdom,
- [F<sup>6</sup>(c) multiplex services (as defined by section 1(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC, and
- (d) digital additional services (as defined by section 24(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC]

and to regulate, in accordance with Part II, the provision of local delivery services (within the meaning of that Part) which are so provided.

(2) It shall be the duty of the Commission—

- (a) to discharge their functions under this Part and Part II [F<sup>7</sup> and under Part I of the Broadcasting Act 1996] as respects the licensing of the services referred to in subsection (1) in the manner which they consider is best calculated—
  - (i) to ensure that a wide range of such services is available throughout the United Kingdom, and
  - (ii) to ensure fair and effective competition in the provision of such services and services connected with them; and
- (b) to discharge their functions under this Part [F<sup>8</sup> and Part I of the Broadcasting Act 1996] as respects the licensing of television programme services [F<sup>8</sup> and multiplex services (as defined by section 1(1) of that Act)] in the manner which they consider is best calculated to ensure the provision of [F<sup>9</sup> television programme services.] which (taken as a whole) are of high quality and offer a wide range of programmes calculated to appeal to a variety of tastes and interests.

(3) Subsection (2)(a)(ii) shall not be construed as affecting the discharge by the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission of any of his or their functions in connection with competition.

(4) In this Part—

“additional service” has the meaning given by section 48(1); and

“television programme service” means—

- (a) a television broadcasting service (as defined by subsection (5));
- [F<sup>10</sup>(aa) a restricted service (as defined by section 42A);]
- [F<sup>11</sup>(b) a satellite television service (as defined by section 43(1));]
- (c) a licensable programme service (as defined by section 46(1)). [F<sup>12</sup> or
- (d) a digital programme service (as defined by section 1(4) of the Broadcasting Act 1996).]

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- (5) In this Part “television broadcasting service” means (subject to subsection (6)) a service consisting in the broadcasting of television programmes for general reception in, or in any area in, the United Kingdom, <sup>F13</sup> . . . [<sup>F14</sup>but not including a restricted service (as defined by section 42A) [<sup>F15</sup>, a satellite television service (as defined by section 43(1)),]or a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996)]
- (6) Subsection (5) does not apply to any teletext service or any other service in the case of which the visual images broadcast in the service consist wholly or mainly of non-representational images, that is to say visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.

#### Textual Amendments

- F2** Words in s. 2(1) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. 1 para. 1(2)(a)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F3** Words in s. 2(1)(a) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 1(2)(a)**
- F4** Word in s. 2(1)(a) repealed (1.10.1996) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I**; S.I. 1996/2120, art. 4, **Sch. 1**
- F5** S. 2 (1)(aa) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 1(2)(b)**
- F6** S. 2(1)(c)(d) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(2)(b)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F7** Words in s. 2(2)(a) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(3)(a)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F8** Words in s. 2(2)(b) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(3)(b)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F9** Words in s. 2(2)(b) substituted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(3)(b)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F10** S. 2(4)(aa) inserted (1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 12**; S.I. 1997/1005, art. 4
- F11** S. 2(4)(b) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 1(3)**
- F12** S. 2(4)(d) and the preceding “or” inserted (1.10.1996) after s. 2(4)(c) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(4)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F13** Words in S. 2(5) omitted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 1(4)(a)**
- F14** Words in s. 2(5) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(5)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F15** Words in S. 2(5) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 1(4)(b)**

### *General provisions about licences*

## 3 Licences under Part I.

- (1) Any licence granted by the Commission under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of Chapter II, III, IV or V of this Part.
- (2) A licence may be so granted for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified.
- (3) The Commission—



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- (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and
- (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;

and nothing in this Part shall be construed as affecting the operation of this subsection or of section 5(1) or (2)(b) or (c).

[<sup>F16</sup>(3A) Where the Commission are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.]

- (4) The Commission may vary a licence by a notice served on the licence holder if—
  - (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Commission about the variation.
- (5) Paragraph (a) of subsection (4) does not affect the operation of section 41(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 19(1) or 52(1) or in pursuance of any other provision of this Part which applies section 19(1).
- (6) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Commission.
- (7) Without prejudice to the generality of subsection (6), the Commission shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.
- (8) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the <sup>M1</sup>Wireless Telegraphy Act 1949 or section 7 of the <sup>M2</sup>Telecommunications Act 1984 in connection with the provision of that service.

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#### Textual Amendments

**F16** S. 3(3A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1)(f), Sch. 8 para. 1

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#### Marginal Citations

**M1** 1949 c. 54.  
**M2** 1984 c. 12.

## 4 General licence conditions.

- (1) A licence may include—
  - (a) such conditions as appear to the Commission to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act;

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- (b) conditions requiring the payment by the licence holder to the Commission (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
  - (c) conditions requiring the licence holder to provide the Commission, in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under this Act;
  - (d) conditions providing for such incidental and supplemental matters as appear to the Commission to be appropriate.
- (2) A licence may in particular include conditions requiring the licence holder—
- (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified; or
  - (b) (except to the extent that the Commission consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified.
- (3) The fees required to be paid to the Commission by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by the Commission; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to this Act.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Commission shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide the Commission with any information, and
  - (b) in purported compliance with that condition provides them with information which is false in a material particular,
- he shall be taken for the purposes of sections 41 and 42 to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

## **5 Restrictions on the holding of licences.**

- (1) The Commission shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - (b) that any requirements imposed by or under Parts III to V of that Schedule are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Commission may accordingly—

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- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
  - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
  - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
- (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
- (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
- (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
  - (i) shareholdings in the body, or
  - (ii) the directors of the body,where such proposals are known to the body;
- (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.

[<sup>F17</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Commission shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]

- (3) Where the Commission—
  - (a) revoke the award of any licence in pursuance of subsection (2)(b), or
  - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
- (4) Those provisions shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as the Commission consider necessary or expedient to ensure that where—
  - (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,the Commission may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.

- [<sup>F18</sup>(6) The Commission shall not serve any such notice on the licence holder unless—
- (a) the Commission have notified him of the matters complained of and given him a reasonable opportunity of making representations to them about those matters, and
  - (b) in a case where the relevant change is one falling within subsection (6A)—

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- (i) they have also given him an opportunity of complying with Parts III and IV of Schedule 2 within a period specified in the notification, and
  - (ii) the period specified in the notification has elapsed.
- (6A) A relevant change falls within this subsection if it consists only in one or more of the following—
- (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2;
  - (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule);
  - (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (6B) Where a licence has been granted in a case where the Commission could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Commission would have made such a determination in the new circumstances of the case.]
- [<sup>F19</sup>(6C) The Commission shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change..
- <sup>F19</sup>(6D) Where the Commission receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.]
- (7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—
- (a) any change affecting the nature or characteristics of the body, or
  - (b) any change in the persons having control over or interests in the body, [<sup>F20</sup>or
  - (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,]
- being [<sup>F21</sup>(in any case)] a change which is such that, if it fell to the Commission to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

#### Textual Amendments

- F17** S. 5(2A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(2)**
- F18** S. 5(6)(6A)(6B) substituted for s. 5(6) (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 12(2)**; S.I. 1996/2120, art. 5, **Sch. 2**
- F19** S. 5(6C)(6D) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(3)**
- F20** S. 5(7)(c) and the word “or” immediately preceding it inserted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 12(3)(a)**; S.I. 1996/2120, art. 5, **Sch. 2**
- F21** Words in s. 5(7) substituted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 12(3)(b)**; S.I. 1996/2120, art. 5, **Sch. 2**

#### Modifications etc. (not altering text)

- C7** S. 5(1) modified (1.11.1996) by 1996 c. 55, s. 143(1)(2); S.I. 1996/2120, art. 5, **Sch. 2**

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**C8** S. 5(1)(a) amended (1.11.1996) by 1996 c. 55, s. 145(7); S.I. 1996/2120, art. 5, Sch. 2

### *General provisions about licensed services*

## **6 General requirements as to licensed services.**

- (1) The Commission shall do all that they can to secure that every licensed service complies with the following requirements, namely—
  - (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
  - (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality;
  - (c) that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
  - (d) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those watching the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and
  - (e) that its programmes do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.
- (2) In applying subsection (1)(c) a series of programmes may be considered as a whole.
- (3) The Commission shall—
  - (a) draw up, and from time to time review, a code giving guidance as to the rules to be observed in connection with the application of subsection (1)(c) in relation to licensed services; and
  - (b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services;and the Commission may make different provision in the code for different cases or circumstances.
- (4) Without prejudice to the generality of subsection (1), the Commission shall do all that they can to secure that there are excluded from the programmes included in a licensed service all expressions of the views and opinions of the person providing the service on matters (other than the provision of programme services) which are of political or industrial controversy or relate to current public policy.
- (5) The rules specified in the code referred to in subsection (3) shall, in particular, take account of the following matters—
  - (a) that due impartiality should be preserved on the part of the person providing a licensed service as respects major matters falling within subsection (1)(c) as well as matters falling within that provision taken as a whole; and

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- (b) the need to determine what constitutes a series of programmes for the purposes of subsection (2).
- (6) The rules so specified shall, in addition, indicate to such extent as the Commission consider appropriate—
- (a) what due impartiality does and does not require, either generally or in relation to particular circumstances;
  - (b) the ways in which due impartiality may be achieved in connection with programmes of particular descriptions;
  - (c) the period within which a programme should be included in a licensed service if its inclusion is intended to secure that due impartiality is achieved for the purposes of subsection (1)(c) in connection with that programme and any programme previously included in that service taken together; and
  - (d) in relation to any inclusion in a licensed service of a series of programmes which is of a description specified in the rules—
    - (i) that the dates and times of the other programmes comprised in the series should be announced at the time when the first programme so comprised is included in that service, or
    - (ii) if that is not practicable, that advance notice should be given by other means of subsequent programmes so comprised which include material intended to secure, or assist in securing, that due impartiality is achieved in connection with the series as a whole;
 and those rules shall, in particular, indicate that due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles.
- (7) The Commission shall publish the code drawn up under subsection (3), and every revision of it, in such manner as they consider appropriate.
- (8) Nothing in this section or in sections 7 to 12 has effect in relation to any licensed service which is an additional service other than [<sup>F22</sup>a teletext service].

#### Textual Amendments

**F22** Words in s. 6(8) substituted (1.11.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 13**; S.I. 1996/2120, art. 5, Sch. 2

#### Modifications etc. (not altering text)

**C9** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, **S. 25(5)(6)**; S.I. 1996/2120, **art. 4 Sch. 1**

Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, **s. 30(5)**; S.I. 1996/2120, art. 4, **Sch.**

**C10** S. 6 applied (with modifications) (1.10.1996) by 1996 c. 55, **s. 18(5)(6)**; S.I. 1996/2120, art. 4, **Sch. 1**

## 7 General code for programmes.

- (1) The Commission shall draw up, and from time to time review, a code giving guidance—
- (a) as to the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programmes included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programmes;

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- (b) as to the rules to be observed with respect to the inclusion in such programmes of appeals for donations; and
- (c) as to such other matters concerning standards and practice for such programmes as the Commission may consider suitable for inclusion in the code;

and the Commission shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.

- (2) In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Commission shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be watching the programmes.
- (3) The Commission shall, in drawing up or revising the code under this section, take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (4) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

**Modifications etc. (not altering text)**

- C11** S. 7 applied (27.7.2000) by S.I. 2000/1864, **Sch. para. 2**
- C12** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, **Sch. 1**
- C13** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, **Sch. 1**  
Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, **Sch. 1**

## **8 General provisions as to advertisements.**

- (1) The Commission shall do all that they can to secure that the rules specified in subsection (2) are complied with in relation to licensed services.
- (2) Those rules are as follows—
  - (a) a licensed service must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or
    - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in a licensed service there must be no unreasonable discrimination either against or in favour of any particular advertiser; and
  - (c) a licensed service must not, without the previous approval of the Commission, include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the licence holder is prohibited from advertising by virtue of any provision of section 9.



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- (3) Nothing in subsection (2) shall be construed as prohibiting the inclusion in a licensed service of any party political broadcast which complies with the rules (so far as applicable) made by the Commission for the purposes of section 36.
- (4) After consultation with the Commission the Secretary of State may make regulations amending, repealing, or adding to the rules specified in subsection (2); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (5) The Commission shall not act as an advertising agent.

**Modifications etc. (not altering text)**

- C14** S. 8 modified (1.10.1996) by 1996 c. 55, s. 31; S.I. 1996/2120, art. 4, **Sch. 1**
- C15** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, **Sch. 1**
- C16** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, **Sch. 1**
- Ss. 6-12 (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, **Sch. 1**

**9 Control of advertisements.**

- (1) It shall be the duty of the Commission—
  - (a) after the appropriate consultation, to draw up, and from time to time review, a code—
    - (i) governing standards and practice in advertising and in the sponsoring of programmes, and
    - (ii) prescribing the advertisements and methods of advertising or sponsorship to be prohibited, or to be prohibited in particular circumstances; and
  - (b) to do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
 and the Commission may make different provision in the code for different kinds of licensed services.
- (2) In subsection (1) “the appropriate consultation” means consultation with—
  - (a) the Radio Authority;
  - (b) every person who is the holder of a licence under this Part;
  - (c) such bodies or persons appearing to the Commission to represent each of the following, namely—
    - (i) viewers,
    - (ii) advertisers, and
    - (iii) professional organisations qualified to give advice in relation to the advertising of particular products,
 as the Commission think fit; and
  - (d) such other bodies or persons who are concerned with standards of conduct in advertising as the Commission think fit.
- (3) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.



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- (4) The Commission shall—
- (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be included in licensed services and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of such services; and
  - (b) carry out any directions which he may give to them in respect of such matters.
- (5) The Commission may, in the discharge of a general responsibility with respect to advertisements and methods of advertising and sponsorship, impose requirements as to advertisements or methods of advertising or sponsorship which go beyond the requirements imposed by the code.
- (6) The methods of control exercisable by the Commission for the purpose of securing that the provisions of the code are complied with, and for the purpose of securing compliance with requirements imposed under subsection (5) which go beyond the requirements of the code, shall include a power to give directions to the holder of a licence—
- (a) with respect to the classes and descriptions of advertisements and methods of advertising or sponsorship to be excluded, or to be excluded in particular circumstances, or
  - (b) with respect to the exclusion of a particular advertisement, or its exclusion in particular circumstances.
- (7) The Commission may give directions to persons holding any class of licences with respect to the times when advertisements are to be allowed.
- (8) Directions under this section may be, to any degree, either general or specific and qualified or unqualified; and directions under subsection (7) may, in particular, relate to—
- (a) the maximum amount of time to be given to advertisements in any hour or other period,
  - (b) the minimum interval which must elapse between any two periods given over to advertisements and the number of such periods to be allowed in any programme or in any hour or day,
  - (c) the exclusion of advertisements from a specified part of a licensed service, and may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.
- (9) The Commission shall—
- (a) in drawing up or revising the code, or
  - (b) in giving any directions under subsection (7),
- take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

**Modifications etc. (not altering text)**

C17 S. 9 modified (1.10.1996) by 1996 c. 55, s. 31; S.I. 1996/2120, art. 4, Sch. 1

C18 Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, Sch. 1

C19 Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, Sch. 1

Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, Sch. 1

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## 10 Government control over licensed services.

- (1) If it appears to him to be necessary or expedient to do so in connection with his functions as such, the Secretary of State or any other Minister of the Crown may at any time by notice require the Commission to direct the holders of any licences specified in the notice to publish in their licensed services, at such times as may be specified in the notice, such announcement as is so specified, with or without visual images of any picture, scene or object mentioned in the announcement; and it shall be the duty of the Commission to comply with the notice.
- (2) Where the holder of a licence publishes any announcement in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (3) The Secretary of State may at any time by notice require the Commission to direct the holders of any licences specified in the notice to refrain from including in the programmes included in their licensed services any matter or classes of matter specified in the notice; and it shall be the duty of the Commission to comply with the notice.
- (4) Where the Commission—
  - (a) have given the holder of any licence a direction in accordance with a notice under subsection (3), or
  - (b) in consequence of the revocation by the Secretary of State of such a notice, have revoked such a direction,
 or where such a notice has expired, the holder of the licence in question may publish in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (5) The powers conferred by this section are in addition to any power specifically conferred on the Secretary of State by any other provision of this Act.
- (6) In relation to any licensed service provided from a place in Northern Ireland, the reference in subsection (1) to a Minister of the Crown includes a reference to the head of any Northern Ireland department.

### Modifications etc. (not altering text)

- C20** S. 10 extended (1.10.1996) by 1996 c. 55, s. 12(7); S.I. 1996/2120, art. 4, **Sch. 1**
- C21** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, **Sch. 1**
- C22** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, **Sch. 1**
- Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, **Sch. 1**

## 11 Monitoring by Commission of programmes included in licensed services.

- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Commission may make and use recordings of those programmes or any part of them.
- (2) A licence shall include conditions requiring the licence holder—
  - (a) to retain, for a period not exceeding 90 days, a recording of every programme included in the licensed service;

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- (b) at the request of the Commission, to produce to them any such recording for examination or reproduction;
  - (c) at the request of the Commission, to produce to them any script or transcript of a programme included in the licensed service which he is able to produce to them.
- (3) Nothing in this Part shall be construed as requiring the Commission, in the discharge of their duties under this Part as respects licensed services and the programmes included in them, to view such programmes in advance of their being included in such services.

**Modifications etc. (not altering text)**

- C23** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, Sch. 1
- C24** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, Sch. 1
- Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, Sch. 1

## 12 Audience research.

- (1) The Commission shall make arrangements—
- (a) for ascertaining—
    - (i) the state of public opinion concerning programmes included in licensed services, and
    - (ii) any effects of such programmes on the attitudes or behaviour of persons who watch them; and
  - (b) for the purpose of assisting them to perform their functions under Chapter II in connection with the programmes to be included in the various services licensed thereunder, for ascertaining the types of programme that members of the public would like to be included in licensed services.
- (2) Those arrangements shall—
- (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Commission; and
  - (b) include provision for full consideration by the Commission of the results of any such research.

**Modifications etc. (not altering text)**

- C25** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, Sch. 1
- Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, Sch. 1
- S. 12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 18(5)(6); S.I. 1996/2120, art. 4, Sch. 1

### *Prohibition on providing unlicensed television services*

## 13 Prohibition on providing television services without a licence.

- (1) Subject to subsection (2), any person who provides any service falling within section 2(1)(a) [F23, (aa)] [F24, (b), (c) or (d)] without being authorised to do so by or

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under a licence under this Part [<sup>F25</sup>or Part I of the Broadcasting Act 1996] shall be guilty of an offence.

- (2) The Secretary of State may, after consultation with the Commission, by order provide that subsection (1) shall not apply to such services or descriptions of services as are specified in the order.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) No proceedings in respect of an offence under this section shall be instituted—
  - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) Without prejudice to subsection (3), compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F23** Words in s. 13(1) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 2**
- F24** Words in s. 13(1) substituted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 2(1)(a)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F25** words in s. 13(1) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 2(1)(b)**; S.I. 1996/2120, art. 4, **Sch. 1**

#### Modifications etc. (not altering text)

- C26** S. 13 excluded (temp. until 11.10.1997) by S.I. 1997/1682, **regs. 1, 4(3)**
- C27** S. 13(1) excluded by S.I. 1990/2537, **art. 2(1)**  
 S. 13(1) excluded (5.1.1995) by S.I. 1995/3172, **art. 2**

## CHAPTER II

### TELEVISION BROADCASTING ON CHANNELS 3, 4 AND 5

#### *Channel 3*

#### 14 Establishment of Channel 3.

- (1) The Commission shall do all that they can to secure the provision, in accordance with this Chapter, of a nationwide system of television broadcasting services to be known as Channel 3.
- (2) Subject to subsection (5), Channel 3 shall be structured on a regional basis, with each of the services comprised within it (“Channel 3 services”) being provided for such area in the United Kingdom as the Commission may determine in the case of that service.

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- (3) If it appears to the Commission that it would be appropriate for a particular Channel 3 service to do so, they may determine that the service shall include the provision of different programmes—
  - (a) for such different parts of the area for which it is provided, or
  - (b) for such different communities living within that area,as they may determine.
- (4) If the Commission so determine in the case of a particular Channel 3 service, that service shall be provided for a particular area only between such times of the day or on such days of the week (or both) as the Commission may determine.
- (5) If the Commission so determine, a Channel 3 service may be provided for two or more areas for which regional Channel 3 services are provided, but any such service may only be so provided between particular times of the day.
- (6) In this Part—
  - “regional Channel 3 service” means a Channel 3 service provided for a particular area determined under subsection (2); and
  - “national Channel 3 service” means a Channel 3 service provided as mentioned in subsection (5).
- (7) Any reference in this section to an area in the United Kingdom does not include an area which comprises or includes the whole of England or the whole of Scotland.
- (8) In this section and section 15 “programme” does not include an advertisement.

## **15 Applications for Channel 3 licences.**

- (1) Where the Commission propose to grant a licence to provide a Channel 3 service they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) if the service is to be a regional Channel 3 service, the area in the United Kingdom for which the service is to be provided,
    - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), the different parts of that area, or (as the case may be) the different communities living within it, for which such programmes are to be provided,
    - (iii) if the service is to be provided as mentioned in section 14(4), the times of the day or the days of the week (or both) between or on which it is to be provided, and
    - (iv) if the service is to be a national Channel 3 service, the areas in the United Kingdom for which it is to be provided and the times of the day between which it is to be provided;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and

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- (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 19(1)(c) if he were granted the licence.
- (2) The Commission shall, when publishing a notice under subsection (1), publish with the notice general guidance to applicants for the licence in question which contains examples of the kinds of programme whose inclusion in the service proposed by any such applicant under subsection (3)(b) would be likely to result in a finding by the Commission that the service would comply with the requirements specified in section 16(2) or (3) (as the case may be).
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
  - (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) the applicant's proposals for providing a service that would comply with the requirements specified in section 16(2) or (3) (as the case may be); (c) the applicant's proposals for promoting the understanding and enjoyment by—
    - (i) persons who are deaf or hard of hearing, and
    - (ii) persons who are blind or partially-sighted,
 of the programmes to be included in his proposed service;
  - (d) the applicant's proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his proposed service, together with his proposals for encouraging the training or retraining of persons employed or to be employed by persons providing programmes for inclusion in that service;
  - (e) if the application is for a licence to provide a regional Channel 3 service, the applicant's proposals as to the use, in connection with his proposed service—
    - (i) of offices and studios situated within the area for which that service would be provided, and
    - (ii) of the services of persons employed (whether by him or by any other person) within that area;
  - (f) the applicant's cash bid in respect of the licence;
  - (g) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force; and
  - (h) such other information as the Commission may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under any of paragraphs (b) to (e), (g) and (h) of subsection (3).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,

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- (ii) the proposals submitted by him under subsection (3)(b), and
    - (iii) such other information connected with his application as the Commission consider appropriate; and
  - (b) a notice—
    - (i) inviting representations to be made to them with respect to any matters published by them in accordance with paragraph (a) (ii) and (iii) above, and
    - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.
- (7) In this Part “cash bid”, in relation to a licence, means an offer to pay to the Commission a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

## **16 Procedure to be followed by Commission in connection with consideration of applications for licences.**

- (1) Where a person has made an application for a Channel 3 licence in accordance with section 15, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 17 unless it appears to them—
  - (a) that his proposed service would comply with the requirements specified in subsection (2) or (3) below (as the case may be), and
  - (b) that he would be able to maintain that service throughout the period for which the licence would be in force,and any reference to an applicant in section 17 (except in section 17(12)(b)) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Where the service to be provided under the licence is a regional Channel 3 service, the requirements referred to in subsection (1)(a) are—
  - (a) that a sufficient amount of time is given in the programmes included in the service to news programmes and current affairs programmes which (in each case) are of high quality and deal with both national and international matters, and that such news programmes are broadcast at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
  - (b) that a sufficient amount of time is given in the programmes included in the service to programmes (other than news and current affairs programmes) which are of high quality;
  - (c) that a sufficient amount of time is given in the programmes so included—
    - (i) to a suitable range of regional programmes, that is to say, programmes (including news programmes) which are of particular interest to persons living within the area for which the service is provided, and
    - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), to a suitable range of programmes for each of the different parts of that area or (as the case may be) for each of the different communities living within it, being in each case a range of programmes (including news programmes) which are of

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- particular interest to persons living within the relevant part of that area or (as the case may be) the relevant community,
- and that any news programmes so included in accordance with subparagraph (i) or (ii) are of high quality;
- (d) that a suitable proportion of the regional programmes included in the service in accordance with paragraph (c) are made within the area for which it is to be provided;
  - (e) that a sufficient amount of time is given in the programmes included in the service to religious programmes and programmes intended for children;
  - (f) that (taken as a whole) the programmes so included are calculated to appeal to a wide variety of tastes and interests;
  - (g) that a proper proportion of the matter included in those programmes is of European origin; and
  - (h) that in each year not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity of independent productions.
- (3) Where the service to be provided under the licence is a national Channel 3 service, the requirements referred to in subsection (1)(a) are such (if any) of the requirements specified in subsection (2) as the Commission may determine to be appropriate having regard to the nature of that service.
  - (4) In deciding whether an applicant's proposed service would comply with the requirements specified in subsection (2) or (3) (as the case may be), the Commission shall take into account any representations made to them in pursuance of section 15(6)(b) with respect to that service; and in applying subsection (2)(g) the Commission shall have regard to such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
  - (5) In subsection (2)(h)—
    - (a) “qualifying programmes” and “independent productions” mean, in each case, programmes of such description as the Secretary of State may by order specify for the purpose; and
    - (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
  - (6) The Secretary of State may by order amend subsection (2)(h) by substituting a different percentage for the percentage for the time being specified there.
  - (7) Before making an order under subsection (5) or (6) the Secretary of State shall consult the Commission; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
  - (8) In this section “programme” does not include an advertisement.

## **17 Award of licence to person submitting highest cash bid.**

- (1) Subject to the following provisions of this section, the Commission shall, after considering all the cash bids submitted by the applicants for a Channel 3 licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash



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bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Commission shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.

- (3) The Commission may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.
- (4) Without prejudice to the generality of subsection (3), the Commission may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to the Commission—
  - (a) that the quality of the service proposed by such an applicant is exceptionally high; and
  - (b) that the quality of that proposed service is substantially higher than the quality of the service proposed—
    - (i) by the applicant who has submitted the highest bid, or
    - (ii) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids;and where it appears to the Commission, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (5) If it appears to the Commission, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
  - (a) they shall refer his application to the Secretary of State, together with—
    - (i) a copy of all documents submitted to them by the applicant, and
    - (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
  - (a) paying any amounts payable by him by virtue of section 19(1), or
  - (b) otherwise financing the provision of his proposed service.
- (8) In a case where any requirement such as is mentioned in section 5(1)(b) operates to preclude the Commission from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with

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rules made by them for regulating the awarding of licences in such cases; and any such rules may provide for the awarding of licences by reference to orders of preference notified to the Commission by applicants at the time of making their applications.

- (9) Any such rules shall be published by the Commission in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.
- (10) Where the Commission are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (14)) have effect as if that person had not made an application for the licence.
- (11) Where the Commission have awarded a Channel 3 licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
  - (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (12) The matters referred to in subsection (11)(a) are—
  - (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to the Commission that his proposed service would comply with the requirements specified in section 16(2) or (3) (as the case may be);
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Commission's reasons for the licence having been so awarded; and
  - (d) such other information as the Commission consider appropriate.
- (13) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if—
  - (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (14) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if the Commission decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if the Commission decide that it would be desirable to publish a further notice under this Part in respect of the grant of a further licence to provide the service in question.

**[<sup>F26</sup>17A Award of Channel 3 licence subject to conditions.**

- (1) The Commission may, when awarding a Channel 3 licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—

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- (a) any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and
  - (b) any information provided to them under section 15(3)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where the Commission determine that any condition imposed by them in relation to a Channel 3 licence in pursuance of subsection (1) has not been satisfied, section 17 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 17 shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence.]

#### Textual Amendments

**F26** S. 17A inserted (1.10.1996) by 1996 c. 55, s. 86(1); S.I. 1996/2120, art. 4, Sch. 1

## 18 Failure to begin providing licensed service and financial penalties on revocation of licence.

- (1) If at any time after a Channel 3 licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Commission that he does not intend to provide the service in question, or
  - (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,
- then, subject to subsection (2)—
- (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 17 shall (subject to section 17(14)) have effect as if he had not made an application for the licence.
- (2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where the Commission revoke a Channel 3 licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a financial penalty of the prescribed amount.
- (4) In subsection (3) “the prescribed amount” means—
- (a) where—
    - (i) the licence is revoked under this section, or
    - (ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended,

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- 7 per cent. of the amount which the Commission estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 19(2) to (6)); and
- (b) in any other case, 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 68(5), be recoverable by the Commission as a debt due to them from any person who controls that body.

**Modifications etc. (not altering text)**

**C28** S. 18(3) modified (1.11.1996) by 1996 c. 55, s. 145(6)(a); S.I. 1996/2120, art. 4, Sch. 1; S.I. 1996/2120, art. 5, Sch. 2

**19 Additional payments to be made in respect of Channel 3 licences.**

- (1) A Channel 3 licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b))—
- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
- (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
- (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 15(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
- (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
- (b) in respect of charges made in that period for the reception of programmes included in that service.
- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2)(a), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—
- (a) the licence holder or any connected person, and
- (b) a person acting as an advertising agent,
- the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of the commission.

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- (5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.
- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A Channel 3 licence may include conditions—
- (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—
- (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (9) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—
- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
  - (b) the retail prices index for the month of November in the year preceding the relevant year;
- and for this purpose “the retail prices index” means the general index of prices (for all items) published by the <sup>F27</sup>Office for National Statistics].

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#### Textual Amendments

**F27** Words in S. 19(10) substituted (1.4.1996) by [S.I. 1996/273, art. 5\(1\), Sch. 2 para. 25](#)

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## 20 Duration and renewal of Channel 3 licences.

- (1) A Channel 3 licence shall (subject to the provisions of this Part) continue in force for a period of ten years, and may (subject to the following provisions of this section) be renewed on one or more occasions for a period of ten years beginning with the date of renewal.
- (2) An application for the renewal of a Channel 3 licence under subsection (1) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a Channel 3 licence has been duly made to the Commission, they may only (subject to subsection (5)) refuse the application if—
  - (a) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied—
    - (i) with the conditions included in the licence in pursuance of subsection (1) of section 33 (whether as originally imposed or as varied under subsection (3) of that section), and
    - (ii) with the requirements specified in section 16(2) or (3) (as the case may be); or
  - (b) they propose to grant a fresh Channel 3 licence for the provision of a service which would differ from that provided by the applicant under his licence as respects either—
    - (i) the area for which it would be provided, or
    - (ii) the times of the day or days of the week between or on which it would be provided,
 or both.
- (5) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of a Channel 3 licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any such application the Commission—
  - (a) shall determine an amount which is to be payable to the Commission by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (b) may specify a different percentage from that specified under section 15(1)(d)
    - (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 19(1)(c) during the period for which the licence is to be renewed.
- (7) The amount determined by the Commission under subsection (6)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 19(1)(a) if they were granting a fresh licence to provide the Channel 3 service in question.
- (8) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not

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reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—

- (a) the amount determined by them under subsection (6)(a), and
- (b) any percentage specified by them under subsection (6)(b),

and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.

- (9) Where a Channel 3 licence has been renewed under this section—
  - (a) any conditions included in it in pursuance of section 19 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Commission under subsection (6)(a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (6)(b) above;
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a Channel 3 licence is originally in force; and
  - (c) the reference in section 42(4) to the end of the period for which a Channel 3 licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.
- (10) In this section “the relevant date”, in relation to a Channel 3 licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 15(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the Channel 3 service formerly provided under that licence.

## **21 Restriction on changes in control over Channel 3 licence holder.**

- (1) Where—
  - (a) any change in the persons having control over—
    - (i) a body to which a Channel 3 licence has been awarded or transferred in accordance with this Part of this Act, or
    - (ii) an associated programme provider,takes place within the relevant period, and
  - (b) that change takes place without having been previously approved for the purposes of this section by the Commission,then (subject to subsection (4)) the Commission may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.

- (2) In subsection (1)—
  - “associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service; and
  - “the relevant period”, in relation to a Channel 3 licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;

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and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection as if a body to which a Channel 3 licence has been awarded but not yet granted were the holder of such a licence.

(3) The Commission shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a)—

- (a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 15(3)(b) by that body (or, as the case may be, by the person to whom the licence was originally awarded), or
- (b) it appears to them that the change would be prejudicial to the provision of Channel 3 as such a nationwide system of services as is mentioned in section 14(1);

and the Commission may refuse so to approve any such change if, in any circumstances not falling within paragraph (a) or (b) above, they consider it appropriate to do so.

(4) The Commission shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.

(5) Where under subsection (1) the Commission refuse to grant a licence to any body, section 17 shall (subject to section 17(14)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 42 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

## <sup>F28</sup>21A Variation of regional Channel 3 licence following change of control.

(1) Any regional Channel 3 licence granted to a body corporate after the commencement of this section shall include—

- (a) a condition requiring the body to give the Commission advance notice of any proposals known to the body that may give rise to a relevant change of control, and
- (b) a condition requiring the licence holder to provide the Commission, in such manner and at such times as they may reasonably require, with such information as they may require for the purposes of exercising their functions under this section.

(2) Subsections (3) and (4) have effect where—

- (a) in pursuance of a condition in a regional Channel 3 licence the Commission receive notice of any proposals that may give rise to a relevant change of control, or
- (b) a relevant change of control takes place in relation to a body corporate which holds a regional Channel 3 licence (whether or not that change has been previously notified to the Commission).

(3) If it appears to the Commission that the relevant change of control is or would be prejudicial to one or more of the following matters, namely—

- (a) the quality or range of regional programmes included in the service,



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- (b) the quality or range of other programmes included in the service which contribute to the regional character of the service, or
- (c) the quality or range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1),

then, with a view to ensuring that the relevant change of control is not prejudicial to any of those matters, the Commission shall vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of those matters as they consider appropriate.

- (4) If it appears to the Commission that, having regard to the effect, or likely effect, of the relevant change of control on—
  - (a) the time given, in the programmes included in the service—
    - (i) to regional programmes, or
    - (ii) to programmes of the kind mentioned in subsection (3)(b),
  - (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided,
  - (c) the extent of the use in connection with the service—
    - (i) of offices or studios situated within the area for which the service is provided, or
    - (ii) of the services of persons employed (whether by the licence holder or any other person) within that area, or
  - (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area,the relevant change of control is or would be prejudicial to the regional character of the service, the Commission may vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of the matters specified in paragraphs (a), (b), (c) and (d) as they consider appropriate.
- (5) Subject to subsection (6), any new or varied condition imposed under subsection (3) or (4) in relation to any matter specified in that subsection may be more onerous than any existing conditions relating to that matter; and in this subsection “existing condition” means a condition of the licence as it has effect, or had effect, before the relevant change of control.
- (6) The Commission may not under subsection (3) or (4) include any new or varied condition in a licence unless the new condition or the condition as varied is one which (with any necessary modifications) would have been satisfied by the licence holder—
  - (a) during the three months immediately before the relevant date, or
  - (b) if the Commission consider that the performance of the licence holder during that period is not typical of its performance during the twelve months before the relevant date, during such other period of three months during those twelve months as they may notify in writing to the licence holder;and for the purposes of this subsection “the relevant date” is the date of the relevant change of control or, if earlier, the date on which the Commission exercise their powers under subsection (3) or (4).
- (7) The Commission shall not serve a notice on any body under subsection (3) or (4) unless they have given it a reasonable opportunity of making representations to them about the variation.

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- (8) Where, in a case falling within subsection (2)(a), a notice under subsection (3) or (4) varying a licence is served before the change to which it relates takes place, the variation shall not take effect until the change takes place.
- (9) In this section—
- “regional programme”, in relation to any regional Channel 3 service, means any programme (including a news programme) which is of particular interest—
- (a) to persons living within the area for which the service is provided,
  - (b) to persons living within any part of that area, or
  - (c) to particular communities living within that area;
- “relevant change of control” means a change in the persons having control over—
- (a) the body holding the licence, or
  - (b) any body which is connected with that body and appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service.]

#### Textual Amendments

**F28** S. 21A inserted (24.7.1996) by 1996 c. 55, s. 78(1), 149(1)(b)

## 22 Temporary provision of regional Channel 3 service for additional area.

- (1) Where it appears to the Commission—
- (a) that (whether as a result of the revocation of an existing regional Channel 3 licence or for any other reason) there will be, in the case of a particular area determined under section 14(2), a temporary lack of any regional Channel 3 service licensed to be provided for that area, but
  - (b) that it would be reasonably practicable for the holder of a licence to provide a regional Channel 3 service for any other such area to provide his licensed service for the area referred to in paragraph (a) as well,
- the Commission may invite the holder of that licence temporarily to provide his licensed service for that additional area.
- (2) If the holder of that licence agrees so to provide his licensed service, the Commission shall authorise the provision of that service for the additional area in question, during such period as they may determine, by means of a variation of the licence to that effect.

### *Channel 4*

PROSPECTIVE

## 23 The Channel Four Television Corporation.

- (1) There shall be a corporation to be called the Channel Four Television Corporation (in this Part referred to as “the Corporation”).
- (2) The Corporation shall consist of—

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- (a) a chairman and a deputy chairman appointed by [F29]OFCOM] ; and
  - (b) such number of other members, not being less than eleven nor more than thirteen, as [F29]OFCOM] may from time to time determine.
- (3) The other members referred to in subsection (2)(b) shall consist of—
- (a) persons appointed by [F29]OFCOM] ; and
  - (b) ex-officio members of the Corporation;
- and the total number of members appointed by [F29]OFCOM] under subsection (2)(a) and paragraph (a) above shall exceed the number of ex-officio members.
- (4) Any appointment made by [F29]OFCOM] under subsection (2)(a) or (3)(a) shall require the approval of the Secretary of State.
- (5) For the purposes of subsection (3) the following persons shall be ex-officio members of the Corporation, namely—
- (a) the chief executive of the Corporation; and
  - (b) such other employees of the Corporation as may for the time being be nominated by the chief executive and the chairman of the Corporation acting jointly.
- (6) Schedule 3 to this Act shall have effect with respect to the Corporation.

#### Textual Amendments

**F29** Words in s. 23 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 13](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

**C29** Pt. I: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 3\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**C30** S. 23: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 4](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## 24 Channel 4 to be provided by Corporation as licensed service.

- (1) The function of the Corporation shall be to secure the continued provision (subject to and in accordance with the provisions of this Part) of the television broadcasting service known as Channel 4.
- (2) All the shares in the body corporate referred to in section 12(2) of the 1981 Act (activities to be carried on by subsidiary of Independent Broadcasting Authority) shall vest in the Corporation on 1st January 1993.
- (3) Channel 4 shall be provided by the Corporation under a licence granted to them by the Commission, and shall be so provided for so much of England, Scotland and Northern Ireland as may from time to time be reasonably practicable.
- (4) The licence to be granted to the Corporation by the Commission in pursuance of subsection (3) shall continue in force for a period of ten years beginning with 1st January 1993, and may be renewed by the Commission on one or more occasions for a period of ten years beginning with the date of renewal.

[F30](5) The Corporation shall also have power—

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- (a) (subject to and in accordance with Part I of the Broadcasting Act 1996) to arrange for the broadcasting of Channel 4 in digital form in any part of the United Kingdom as a qualifying service (within the meaning of that Part), and
  - (b) to establish qualifying companies, to purchase or otherwise acquire shares, stocks or other securities of qualifying companies and to assist any qualifying company.
- (6) In subsection (5)(b) “qualifying company” means any company (whether incorporated under the law of the United Kingdom or of any other country) which is or will be wholly or mainly engaged in one or more of the following activities—
- (a) the provision of one or more services which are licensed by the Commission or by the Radio Authority or which, if provided in the United Kingdom, would be required to be so licensed,
  - (b) activities incidental to such provision, and
  - (c) the holding of shares in any other company which is wholly or mainly engaged in such provision or in activities incidental to such provision.]

#### Textual Amendments

**F30** S. 24(5)(6) inserted (1.10.1996) by 1996 c. 55, s. 84(1); S.I. 1996/2120, art. 4, Sch. 1

PROSPECTIVE

#### **F31**<sup>25</sup> Conditions to be included in Channel 4 licence.

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#### Textual Amendments

**F31** S. 25 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## **26 Revenue deficits of Corporation to be funded by Channel 3 licensees.**

- (1) The Commission shall, before the beginning of the year 1993 and each subsequent year—
- (a) estimate the amount of the Corporation’s qualifying revenue for that year;
  - (b) estimate the amount of the total television revenues for that year; and
  - (c) estimate the Corporation’s prescribed minimum income for that year;
- and the Commission may, on one or more occasions, revise any estimate made by them under this subsection.
- (2) For the purposes of this section—
- (a) the Corporation’s prescribed minimum income for any year shall be 14 per cent. of the total television revenues for that year; and
  - (b) “total television revenues” means, in relation to any year, the aggregate of the qualifying revenues for that year of the following, namely—
    - (i) all holders of Channel 3 or Channel 5 licences;

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- (ii) the Welsh Authority; and
  - (iii) the Corporation itself.
- (3) If, in the case of any year, the aggregate of the following amounts, namely—
  - (a) the amount of the Corporation’s qualifying revenue for that year as estimated by the Commission under subsection (1), and
  - (b) any amount which, at the beginning of that year, is for the time being standing to the credit of any such reserve fund as is mentioned in section 27(3),is less than the amount of the Corporation’s prescribed minimum income for that year as estimated by the Commission under subsection (1), then (subject to subsection (4)) the amount of the difference shall be raised by the Commission by means of a levy imposed on all persons who are for the time being holders of Channel 3 licences.
- (4) The aggregate amount payable by virtue of any levy under subsection (3) shall not exceed 2 per cent. of the amount estimated by the Commission for the year in question under subsection (1)(b); and the amount to be paid by each of the persons subject to the levy shall be such proportion of that aggregate amount as is determined by the Commission in relation to him (and different proportions may be so determined in relation to different persons).
- (5) Every Channel 3 licence shall include conditions—
  - (a) requiring the holder of the licence to pay to the Commission, by monthly instalments, any amount which he is liable to pay by virtue of subsections (3) and (4);
  - (b) authorising the Commission to adjust the instalments payable by the holder of the licence to take account of any revised estimate made by them under subsection (1); and
  - (c) providing for the adjustment of any overpayment or underpayment.
- (6) Any amount received by the Commission by virtue of subsection (5)(a) shall be transmitted by them to the Corporation.
- (7) Where, in respect of any year—
  - (a) the Commission have imposed a levy under subsection (3), and
  - (b) the aggregate amount transmitted by them to the Corporation under subsection (6) exceeds the relevant amount,the Commission shall notify the Corporation of that fact; and the Corporation shall, as soon as reasonably practicable after receiving such a notification, repay to the Commission the amount of that excess.
- (8) In subsection (7) “the relevant amount” means the amount by which the aggregate of the following amounts, namely—
  - (a) the Corporation’s qualifying revenue for the year in question, and
  - (b) any such amount as is mentioned in subsection (3)(b),is less than the Corporation’s prescribed minimum income for that year.
- (9) Section 19(2) to (6) shall have effect, with any necessary modifications, for the purpose of enabling the Commission to estimate or determine a person’s qualifying revenue for any year for the purposes of this section.
- (10) The Secretary of State may by order amend subsection (2) or (4) above by substituting a different percentage for the percentage for the time being specified there; but no such order may be made before the end of the year 1997.

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- (11) An order shall not be made under subsection (10) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

## 27 Application of excess revenues of Corporation.

- (1) Where the qualifying revenue of the Corporation for any year exceeds the Corporation's prescribed minimum income for that year, the Corporation shall—

- (a) pay [<sup>F32</sup>50 per cent] of the excess to the Commission; and
- (b) apply [<sup>F33</sup>the remainder of the excess] in accordance with subsection (3).

- (2) Where the Commission receive any amount under subsection (1)(a) in respect of any year, they shall distribute that amount (“the relevant amount”) between the holders of Channel 3 licences in such a way that each of them receives such proportion of the relevant amount as corresponds to the proportion of the aggregate amount referred to in subsection (4) of section 26 which he would, in the opinion of the Commission, have been required to pay if a levy had been imposed for that year under subsection (3) of that section.

- (3) Where subsection (1)(b) has effect in relation to any amount—

- (a) [<sup>F34</sup>nil per cent] of that amount shall be carried by the Corporation to the credit of a reserve fund established by them under this subsection, and
- (b) [<sup>F35</sup>the remainder of that amount] may be applied by the Corporation towards meeting current expenditure incurred by them in connection with the provision of Channel 4, but to the extent that it is not so applied shall be carried to the credit of that fund;

and (subject to the following provisions of this section) the management and application of that fund shall be as the Corporation may determine.

- (4) Subject to subsection (5), no part of that fund shall be applied otherwise than for the purposes of Channel 4; and no direction may be given by the Secretary of State under that subsection with respect to the application of any amount for the time being standing to the credit of that fund which has been taken into account by the Commission for the purposes of section 26(3)(b) or (8)(b).

- (5) The Secretary of State may, with the approval of the Treasury, give to the Corporation such directions as he thinks fit with respect to the management and application of that fund (including directions requiring the whole or part of it to be paid into the Consolidated Fund); and the Corporation shall comply with any such directions.

- (6) In subsection (1) above the reference to the Corporation's prescribed minimum income for any year shall be construed in accordance with section 26(2); and subsections (2) to (6) of section 19 shall have effect for determining the Corporation's qualifying revenue for any year for the purposes of subsection (1) above as they have effect for determining a person's qualifying revenue for any accounting period of his for the purposes of subsection (1)(c) of that section.

- [<sup>F36</sup>(7) The Secretary of State may by order—

- (a) amend subsection (1)(a) by substituting for the percentage for the time being specified there a percentage specified in the order, which may be nil but must not be more than 50 per cent., and
- (b) amend subsection (3)(a) by substituting for the percentage for the time being specified there a percentage specified in the order, which may be nil.

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- (8) An order shall not be made under subsection (7) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.]

#### Textual Amendments

- F32** Words in s. 27(1)(a) substituted (24.7.1996) by 1996 c. 55, ss. 83(2)(a), 149(2) (with s. 43(1)(6))  
**F33** Words in s. 27(1)(b) substituted (24.7.1996) by 1996 c. 55, ss. 83(2)(b), 149(2) (with s. 43(1)(6))  
**F34** Words in s. 27(3)(a) substituted (11.12.1996) by S.I. 1996/3093, art. 2  
**F35** Words in s. 27(3)(b) substituted (24.7.1996) by 1996 c. 55, ss. 83(3)(b), 149(2) (with s. 43(1)(6))  
**F36** S. 27(7)(8) inserted (24.7.1996) by 1996 c. 55, ss. 83(4), 149(2) (with s. 43(1)(6))

### Channel 5

#### 28 Channel 5.

- (1) The Commission shall do all that they can to secure the provision of a television broadcasting service for any such minimum area of the United Kingdom as may be determined by them in accordance with subsection (2); and any such service shall be known as Channel 5.
- (2) In determining the minimum area of the United Kingdom for which Channel 5 is to be provided the Commission shall have regard to the following consideration, namely that the service should, so far as is reasonably practicable, make the most effective use of the frequencies on which it is to be provided.
- (3) If the Commission so determine, Channel 5 shall be provided under a particular licence only between such times of the day or on such days of the week (or both) as they may determine.
- (4) Where the Commission have granted a licence to provide Channel 5, they may, if it appears to them to be appropriate to do so in view of any lack of facilities available for transmitting the service, dispense with any requirement to provide the service for such part of the area referred to in subsection (2) as they may determine; and any such dispensation shall have effect for such period as they may determine.

#### 29 Application to Channel 5 of provisions relating to Channel 3.

- (1) Subject to subsections (2) and (3), sections 15 to 21 shall apply in relation to a Channel 5 licence as they apply in relation to a regional Channel 3 licence.
- (2) In its application in relation to a Channel 5 licence—
  - (a) section 15(1)(b)(i) shall be read as referring to any such minimum area of the United Kingdom as is determined by the Commission in accordance with section 28(2); and
  - (b) section 16(2) shall (except where subsection (3) below applies) have effect with the omission of paragraphs (c) and (d).
- (3) Where the Commission make a determination under section 28(3), section 16(2) shall, in its application in relation to each Channel 5 licence, have effect to such extent as they may determine to be appropriate having regard to the nature of the service to be provided under that licence.

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**30 Initial Channel 5 licensee required to retune equipment susceptible to interference.**

- (1) A Channel 5 licence which is in force at the commencement of the provision of Channel 5 shall include conditions—
  - (a) requiring the holder of the licence to make arrangements for any relevant equipment to be retuned or otherwise modified—
    - (i) at the request of the person by whom the equipment is kept (being a request made before such date as is specified in the conditions), and
    - (ii) without charge to that person,
 so far as is necessary to prevent the equipment from suffering interference caused by the transmission of Channel 5;
  - (b) requiring all work falling to be carried out under the arrangements—
    - (i) to be carried out in a proper manner, and
    - (ii) to be completed within such period as is specified in the conditions; and
  - (c) enabling the Commission to determine whether work carried out under the arrangements is carried out in a proper manner.
- (2) Any such Channel 5 licence shall also include conditions requiring the holder of the licence to publicise, in such manner as may be approved by the Commission, information with respect to—
  - (a) the likelihood of different kinds of equipment suffering interference caused by the transmission of Channel 5;
  - (b) the arrangements which the holder of the licence is required to make by virtue of conditions imposed in pursuance of subsection (1); and
  - (c) the kinds of equipment in relation to which those arrangements are to be so made.
- (3) The holder of a Channel 5 licence shall not be required, by virtue of conditions imposed in pursuance of subsection (1), to make any such arrangements as are mentioned in that subsection in relation to any relevant equipment—
  - (a) unless the equipment—
    - (i) is, on the date of the making of such a request as is referred to in paragraph (a)(i) of that subsection, kept by the person in question wholly or mainly for domestic purposes, and
    - (ii) was so kept by that person on the commencement date (if that date occurred before the date mentioned in sub-paragraph (i) above); or
  - (b) if the equipment would not be liable to suffer interference caused by the transmission of Channel 5 but for the installation at the place where the equipment is kept of any apparatus for enabling that service to be received there;

and, where any relevant equipment has been retuned or otherwise modified in accordance with any such conditions, the holder of such a licence shall not be required by virtue of any such conditions to make arrangements on any subsequent occasion for the retuning or other modification of that equipment.
- (4) Any dispute as to when the commencement date occurred in the case of any relevant equipment shall be determined by the Commission.
- (5) Where—



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- (a) in accordance with section 28(3), more than one Channel 5 licence is in force at the same time, and
- (b) each of the licences includes such conditions as are mentioned in subsections (1) and (2),

the holders of the licences shall each comply with those conditions to such extent as the Commission may determine in relation to him.

- (6) Where the holder of a Channel 5 licence is required, by virtue of conditions imposed in pursuance of subsection (1), to make any such arrangements as are mentioned in that subsection in relation to any relevant equipment, those conditions shall be taken as requiring him in addition to make arrangements for any television set connected to that equipment to be returned—

- (a) at the request of the person by whom the equipment is kept, and
- (b) without charge to that person,

so far as is necessary to enable it to be used in conjunction with the equipment (as returned or otherwise modified); and subsections (1)(b) and (c) and (2)(b) shall have effect in relation to those arrangements as they have effect in relation to any such arrangements as are mentioned in subsection (1)(a).

- (7) In this section—

“the commencement date”, in relation to any relevant equipment, means the date when Channel 5 began to be provided for reception in an area which includes the place where the equipment is kept on the date of the making of such a request as is referred to in subsection (1)(a)(i); and

“relevant equipment” means any equipment which is capable of transmitting self-generated electromagnetic signals for reception by a television set connected to it and which is liable, if used without being returned or otherwise modified, to suffer interference caused by the transmission of Channel 5.

### *Provision of news programmes*

## **31 Provision of news on Channels 3 and 5.**

- (1) A Channel 3 or Channel 5 licence shall include conditions requiring the licence holder—

- (a) to broadcast in the licensed service news programmes of high quality dealing with national and international matters; and
- (b) to broadcast such programmes in that service at intervals throughout the period for which the service is provided, and in particular (except in the case of a national Channel 3 licence) at peak viewing times.

- (2) [<sup>F37</sup>For the purpose of securing the nationwide broadcast, by holders of regional channel 3 licenses (taken together), of news programmes which are able to compete effectively with other news programmes broadcast nationwide in the United Kingdom,] regional Channel 3 licence shall, in addition, include conditions requiring the news programmes broadcast by the licence holder in compliance with conditions imposed in pursuance of subsection (1) to be programmes provided by [<sup>F38</sup>the appointed news provider] which are—

- (a) presented live, and

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- (b) broadcast simultaneously with the broadcasts of news programmes provided by [<sup>F39</sup>the appointed] news provider which are made by other holders of regional Channel 3 licences in compliance with conditions so imposed.

[<sup>F40</sup>(3) In subsection (2) “appointed news provider” means, subject to subsection (4), the body corporate for the time being appointed for the purposes of subsection (2), from among the bodies corporate nominated by the Commission under section 32, in accordance with conditions included by virtue of section 31A in regional Channel 3 licences.

- (4) A body corporate ceases by virtue of this subsection to be the appointed news provider if its nomination is terminated by the Commission under any provision of section 32.]

#### Textual Amendments

- F37** Words at the beginning of s. 31(2) inserted (24.7.1996) by 1996 c. 55, ss. 74(2)(a), 149(1)(b) (with s. 43(1)(6))
- F38** Words in s. 31(2) substituted (24.7.1996) by 1996 c. 55, ss. 74(2)(b), 149(1)(b) (with s. 43(1)(6))
- F39** Words in s. 31(2)(b) substituted (24.7.1996) by 1996 c. 55, ss. 74(2)(c), 149(1)(b) (with s. 43(1)(6))
- F40** Ss. 31(3)(4) substituted (24.7.1996) by 1996 c. 55, s. 74(3), 149(1)(b) (with s. 43(1)(6))

#### [<sup>F41</sup>31A Appointment of news provider by holders of regional Channel 3 licences.

A regional Channel 3 licence shall include conditions requiring the holder of the licence to do all that he can to ensure—

- (a) that arrangements are made between all holders of regional Channel 3 licences (“the relevant licence holders”) for the appointment by them, from among the bodies corporate nominated by the Commission under section 32, and on such terms as the relevant licence holders may agree, of a single body corporate to be the appointed news provider for the purposes of section 31(2), and
- (b) that, so long as he provides his licensed service, an appointment for the purposes of section 31(2) is in force.]

#### Textual Amendments

- F41** S. 31A inserted (24.7.1996) by 1996 c. 55, s. 75(1) (with s.43(1)(6))

#### Modifications etc. (not altering text)

- C31** S. 31A restricted (24.7.1996) by 1996 c. 55, s. 75(2) (with s. 43(1)(6))

#### 32 Nomination of bodies to provide news for regional Channel 3 services.

[<sup>F42</sup>(1) With a view to enabling them to nominate bodies corporate as eligible for appointment for the purposes of section 31(2), the Commission shall invite bodies appearing to them to be qualified for nomination to make applications to be so nominated.

- (2) Where a body corporate—
- (a) applies to the Commission (whether in pursuance of any such invitation or not) to be nominated under this section as a nominated news provider, and
- (b) appears to the Commission to be qualified for nomination,
- the Commission shall so nominate that body.

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- (3) Subject to subsection (5), any nomination made by the Commission under this section shall remain in force for a period of ten years, and at the end of that period may be renewed by the Commission for a further period of ten years.
- (4) Where the Commission are notified by the holders of licences to provide regional Channel 3 services that the appointment of the appointed news provider is due to expire, or to be renewed or terminated in accordance with the terms of the appointment, the Commission shall review the qualification for nomination of all nominated news providers (including the appointed news provider).
- (5) If on any such review it appears to the Commission that a body is no longer qualified for nomination they shall (subject to subsection (6)) by notice terminate that body's nomination.
- (6) The Commission shall not terminate a body's nomination under subsection (5) unless they have given the body a reasonable opportunity of making representations to them about the proposed termination.]
- (7) Before nominating, or terminating the nomination of, any body under this section the Commission shall consult every person who is the holder of a licence to provide a regional Channel 3 service.
- (8) Any instrument by which a body is nominated under this section shall include conditions—
  - (a) imposing limits on the extent to which persons of any specified class or description may be participants in the nominated news provider;
  - (b) requiring that body to provide the Commission with such information as they may reasonably require for the purpose of determining whether any of those limits has been exceeded; and
  - (c) enabling the Commission to terminate that body's nomination if satisfied that any of those limits has been exceeded;and any such instrument may provide for any of those limits to apply only after the expiry of a specified period.
- (9) The limits imposed in pursuance of subsection (8) shall secure—
  - (a) that no person is a participant with more than a 20 per cent. interest in the nominated news provider; <sup>F43</sup> . . .
  - <sup>F43</sup>(b) . . . . .
- (10) Any limit imposed in accordance with subsection (9)(a) shall have effect in relation to a particular participant as if he and every person connected with him were one person; <sup>F44</sup> . . .
  - (a) a person who controls the participant;
  - (b) an associate of the participant or of a person falling within paragraph (a); and
  - (c) a body which is controlled by the participant or by any associate of the participant.
- (11) Subject to the provisions of subsections (9) and (10), the limits imposed in pursuance of subsection (8) shall be such as the Commission may determine.
- (12) A body corporate shall be disqualified for being nominated under this section if, by virtue of any provision in Part II of Schedule 2 to this Act, it would be a disqualified person in relation to any description of licence granted by the Commission; and any

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reference in this section to a body corporate appearing to the Commission to be qualified for nomination is a reference to a body corporate <sup>F45</sup>which—

- (a) in their opinion is or, if appointed, would be effectively equipped and adequately financed to provide high quality news programmes for broadcasting in regional Channel 3 services; and
- (b) appears to them not to be disqualified for being nominated under this section by virtue of this subsection.]

(13) In this section—

- (a) references to a nominated news provider are references to a body corporate for the time being nominated under this section; <sup>F46</sup> . . .
- (b) references to nomination under this section are references to nomination under this section <sup>F47</sup>as eligible for appointment]for the purposes of section 31(2);

<sup>F48</sup>and

- (c) references to the appointed news provider are references to the person for the time being appointed for the purposes of section 31(2) under the arrangements referred to in section 31A(a).]

and subsections (8) to (10) shall be construed in accordance with Part I of Schedule 2 to this Act.

#### Textual Amendments

- F42** S. 32(1) to (6) substituted (24.7.199) by 1996 c. 55, ss. 76(2), 149(1)(b) (with ss. 43(1)(6), 76(6))
- F43** S. 32(9)(b) and the preceding word “and” repealed (24.7.1996) by 1996 c. 55, ss. 76(3), 148(2), 149(1)(i), Sch. 11 Pt. I (with ss. 43(1)(6), 76(6))
- F44** Words in S. 32(10) repealed (1.10.1996) by 1996 c. 55, s. 148(2), Sch. 11 Pt. I (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- F45** Words in S. 32(12) substituted (24.7.1996) by 1996 c. 55, ss. 76(4), 149(1)(b) (with ss. 43(1)(6), 76(6))
- F46** Word in S. 32(13)(a) repealed (1.10.1996) by 1996 c. 55, s. 148(2), Sch. 11 Pt. I (with ss. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- F47** Words in S. 32(13)(b) inserted (24.7.1996) by 1996 c. 55, ss. 76(5)(a), 149(1)(b) (with ss. 43(1)(6), 76(6))
- F48** S. 32(13)(c) and the preceding word “and” inserted (24.7.1996) by 1996 c. 55, ss. 76(5)(b), 149(1)(b) (with ss. 43(1)(6), 76(6))

#### *Miscellaneous provisions relating to Channels 3, 4 and 5*

### 33 Conditions requiring holder of Channel 3 or Channel 5 licence to deliver promised service.

- (1) Any Channel 3 or Channel 5 licence shall include such conditions as appear to the Commission to be appropriate for securing—
  - (a) that the service provided under the licence accords with the proposals submitted by the licence holder under subsection (3)(b) of section 15; and
  - (b) the implementation of the proposals submitted by him under subsection (3) (c) and (d), or (as the case may) subsection (3)(c) to (e), of that section.
- (2) In subsection (1) the reference to section 15 is, in relation to a Channel 5 licence, a reference to that section as applied by section 29.

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- (3) Any conditions imposed in pursuance of subsection (1) [F49 or section 21A(3) or(4)] may be varied by the Commission with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).

#### Textual Amendments

**F49** Words in S. 33(3) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 14** (with s. 43(1)(6)); S.I. 1996/2120, **art. 4 Sch. 1**

### 34 Schools programmes.

- (1) The Commission shall do all that they can to secure that a suitable proportion of the programmes which are included in Channel 3 services and Channels 4 and 5 (taken as a whole) are schools programmes.
- (2) Accordingly, any Channel 3 licence or licence to provide Channel 4 or 5 may include—
- (a) conditions requiring the licence holder to produce, or finance the production of, schools programmes;
  - (b) conditions requiring the licence holder to acquire schools programmes provided by other persons;
  - (c) conditions requiring the licence holder to ensure that schools programmes included in the licensed service—
    - (i) are of high quality, and
    - (ii) are suitable to meet the needs of schools in the area or areas in the United Kingdom for which the service is provided;
  - (d) conditions specifying the minimum number of hours in term time or within normal school hours that are to be allocated to the broadcasting of schools programmes in the licensed service;
  - (e) conditions requiring the licence holder to provide such material for use in connection with the schools programmes broadcast by him as may be necessary to secure that effective use is made of those programmes in schools; and
  - (f) conditions requiring the licence holder from time to time to consult such bodies or other persons who are concerned with, or have an interest in, schools or the production of schools programmes as the Commission think fit.
- (3) In this section “schools programmes” means programmes which are intended for use in schools.

### 35 Subtitling for the deaf.

- (1) A Channel 3 or Channel 5 licence shall include—
- (a) conditions—
    - (i) specifying the relevant minimum number of hours in a week for the purposes of this section, and
    - (ii) requiring programmes with subtitling to be broadcast in the licensed service during not less than that number of hours in each week; and
  - (b) conditions requiring the holder of the licence to attain such technical standards relating to the provision of subtitling as are specified in the conditions.

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- (2) Subject to subsections (3) and (4), the relevant minimum number of hours in a week for the purposes of this section is—
- (a) in relation to Channel 3 services—
    - (i) for the year which includes the commencement of this section, such number of hours in a week as the Commission shall determine in order to achieve an increase of at least ten per cent. over the average number of hours in a week during which programmes with subtitling were, during the year immediately preceding that year, broadcast on ITV (as defined by section 10(2) of the 1981 Act); and
    - (ii) for each successive year, such number of hours in a week as the Commission shall determine, being a number greater than that for the previous year; and
  - (b) in relation to Channel 5—
    - (i) for the year which includes the commencement of the provision of Channel 5, such number of hours in a week as the Commission shall determine in order to secure that the proportion of the programmes broadcast on Channel 5 in a week which is represented by programmes with subtitling is the same as that achieved in relation to Channel 3 services by virtue of paragraph (a)(i); and
    - (ii) for each successive year, such number of hours in a week as the Commission shall determine, being a number greater than that for the previous year.
- (3) The Commission shall make such determinations under subsection (2) as are appropriate to secure that, subject to subsection (4), the relevant minimum number of hours in a week for the purposes of this section represents—
- (a) in the case of Channel 3 services—
    - (i) for the year 1998, 50 per cent. of the average number of hours in a week during which programmes were, during the year 1997, broadcast on Channel 3; and
    - (ii) for the year 1999 and each successive year, the greatest number of hours in a week that appears to the Commission to be reasonably practicable; and
  - (b) in the case of Channel 5—
    - (i) for the year which includes the fifth anniversary of the date of the commencement of the provision of Channel 5, 50 per cent. of the average number of hours in a week during which programmes were, during the year preceding that year, broadcast on Channel 5; and
    - (ii) for the year following that year and each successive year, the greatest number of hours in a week that appears to the Commission to be reasonably practicable.
- (4) In the case of—
- (a) a Channel 3 service provided as mentioned in section 14(4) or (5), or
  - (b) a Channel 5 service provided as mentioned in section 28(3),
- the relevant minimum number of hours in a week for the purposes of this section shall for any year be such number of hours in a week as the Commission shall determine, being such proportion of the number of hours in a week determined by the Commission for that year under subsection (2)(a) or (b) (as the case may be) as appears to them to be appropriate.

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- (5) As soon as the Commission have made any determination under this section (other than under subsection (2)(a)(i) or (b)(i))—
  - (a) they shall notify the holder of every licence to which the determination relates of the determination; and
  - (b) every such licence shall have effect as if for the number for the time being specified in the conditions included in the licence in pursuance of subsection (1)(a)(i) there were substituted the new number determined by the Commission.
- (6) Where any week falls—
  - (a) partly within one year to which subsection (2)(a) or (b) applies, and
  - (b) partly within another such year,that week shall be treated for the purposes of this section as falling wholly within the earlier of those years.
- (7) The holder of a Channel 3 or Channel 5 licence shall not impose charges for providing subtitling in respect of any programme broadcast in his licensed service.
- (8) In this section—
  - “on Channel 3” means in Channel 3 services taken as a whole;
  - “on Channel 5” means in the television broadcasting service referred to in section 28(1), taken as a whole;
  - “subtitling” means subtitling for the deaf, whether provided by means of a teletext service or otherwise.

### **36 Party political broadcasts.**

- (1) Subject to subsection (2), any regional Channel 3 licence or licence to provide Channel 4 or 5 shall include—
  - (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and
  - (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Commission may determine.
- (2) Where any determination under section 28(3) is in force, a licence to provide Channel 5 may (but need not) include any such conditions as are mentioned in subsection (1) (a) and (b).
- (3) Without prejudice to the generality of paragraph (b) of subsection (1), the Commission may determine for the purposes of that subsection—
  - (a) the political parties on whose behalf party political broadcasts may be made; and
  - (b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.
- (4) Any rules made by the Commission for the purposes of this section may make different provision for different cases or circumstances.

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### **37 Announcements of programme schedules.**

- (1) Any Channel 3 licence or licence to provide Channel 4 may include conditions requiring the licence holder to include in the licensed service such announcements concerning relevant programme schedules as the Commission may determine.
- (2) In this section “relevant programme schedules” means—
  - (a) in relation to a Channel 3 licence, programme schedules for programmes to be broadcast on Channel 4 and, where any part of the area for which the licensed service is to be provided is in Wales, programme schedules for programmes to be broadcast on S4C; and
  - (b) in relation to the licence to provide Channel 4, programme schedules for programmes to be included in any Channel 3 service.

### **38 Promotion of equal opportunities in relation to employment by licence holder.**

- (1) Any Channel 3 licence or licence to provide Channel 4 or Channel 5 shall include conditions requiring the licence holder—
  - (a) to make arrangements for promoting, in relation to employment by him, equality of opportunity between men and women and between persons of different racial groups; and
  - (b) to review those arrangements from time to time.
- (2) In subsection (1) “racial group” has the same meaning as in the <sup>M3</sup>Race Relations Act 1976.

#### **Marginal Citations**

**M3** 1976 c. 74.

### **39 Networking arrangements between holders of regional Channel 3 licences.**

- (1) This section has effect with respect to the making of arrangements which—
  - (a) apply to all the holders of regional Channel 3 licences, and
  - (b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services,
 being arrangements made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of such services which is able to compete effectively with other television programme services provided in the United Kingdom; and any such arrangements are referred to in this section as “networking arrangements”.
- (2) Any application for a regional Channel 3 licence shall, in addition to being accompanied by any such proposals as are mentioned in section 15(3)(b) to (e), be accompanied by the applicant’s proposals for participating in networking arrangements made under this section; and—
  - (a) where a person has duly made such an application, the Commission—
    - (i) shall, as soon as reasonably practicable after the closing date for applications for the licence, send details of his proposals for



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- participating in such arrangements to the Director General of Fair Trading, and
- (ii) (without prejudice to the operation of section 16(1)) shall not proceed to consider whether to award him the licence as mentioned in that provision unless it appears to the Commission that any such proposals are satisfactory; and
- (b) section 33 shall apply to any such proposals as it applies to the proposals submitted by the applicant under section 15(3)(c) to (e).
- (3) The Commission may publish, in such manner as they consider appropriate, general guidance to applicants for a regional Channel 3 licence as to the kinds of proposals which they would consider satisfactory for the purposes of subsection (2)(a); but before doing so the Commission—
- (a) shall consult the Director General of Fair Trading, and
- (b) if he requests them to make any change in the guidance, shall incorporate the change in the guidance.
- (4) Each regional Channel 3 licence shall include conditions requiring the licence holder to do all that he can to secure—
- (a) (in the case of a licence granted before the relevant date) that, by that date, networking arrangements have been made which—
- (i) have been entered into by all the holders of regional Channel 3 licences, and
- (ii) have been approved by the Commission; and
- (b) (in any case) that, so long as he provides his licensed service, there are in force networking arrangements which have been so entered into and approved (unless there are for the time being in force any arrangements made by the Commission under subsection (5)).
- (5) If—
- (a) no such arrangements as are mentioned in subsection (4)(a) are made by the relevant date, or
- (b) any such arrangements are so made but cease to be in force at any time before 1st January 1995,
- the Commission may themselves draw up such networking arrangements as they consider appropriate; and, if they do so—
- (i) they shall notify all the holders of regional Channel 3 licences of those arrangements, and
- (ii) those arrangements shall (subject to subsection (6)) come into force on a date determined by the Commission;
- and each regional Channel 3 licence shall include conditions requiring the licence holder to give effect to any arrangements made by the Commission under this subsection as for the time being in force.
- (6) No arrangements made by the Commission under subsection (5) shall come into force at any time after 31st December 1994.
- (7) Where—
- (a) any such arrangements have come into force in accordance with subsection (6), but
- (b) any networking arrangements are subsequently—

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- (i) entered into by all the holders of regional Channel 3 licences, and
  - (ii) approved by the Commission,
- the arrangements referred to in paragraph (a) shall cease to have effect on the coming into force of the arrangements referred to in paragraph (b).
- (8) Where any arrangements have been approved by the Commission under subsection (4) or (7)(b), no modification of those arrangements shall be made by the holders of regional Channel 3 licences unless it too has been so approved.
- (9) Where any arrangements have been made by the Commission under subsection (5), they may (whether before or after the date specified in subsection (6)) make such modification of those arrangements as they consider appropriate; and, if they do so—
- (a) they shall notify all the holders of regional Channel 3 licences of the modification, and
  - (b) the modification shall come into force on a date determined by the Commission.
- [<sup>F50</sup>(9A) The matters to which the Commission shall have regard in deciding whether to approve any arrangements or modification under subsection (4) or (8) include the likely effect of the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, on the ability of the holders of regional Channel 3 licences to maintain the quality and range—
- (a) of the regional programmes (as defined by section 21A(9)) included in each regional Channel 3 service, and
  - (b) of the other programmes included in each service which contribute to the regional character of the service.]
- [<sup>F51</sup>(10) Without prejudice to the generality of their power to refuse to approve any arrangements or modification under subsection (4) or (8), the Commission shall refuse to do so if—
- (a) they are not satisfied that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be appropriate for the purpose mentioned in subsection (1), or
  - (b) it appears to them that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be likely to prejudice the ability of the holder of any regional Channel 3 licence to comply with—
    - (i) any condition imposed in pursuance of section 33(1), for the purpose of securing the implementation of proposals relating to the matters specified in section 16(2)(c), or
    - (ii) any condition imposed in pursuance of subsection (3) of section 21A in relation to the matters specified in paragraph (a) of that subsection.]
- (11) Where the Commission have—
- (a) approved any arrangements or modification under subsection (4), (7)(b) or (8), or
  - (b) given with respect to any arrangements or modification the notification required by subsection (5)(i) or (9)(a),
- they shall, as soon as reasonably practicable after giving their approval or (as the case may be) that notification—
- (i) publish details of the arrangements or modification in such manner as they consider appropriate, and

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(ii) comply with the appropriate requirement specified in subsection (12) (a) or (b).

(12) The appropriate requirement referred to in paragraph (ii) of subsection (11) is—

- (a) in the case of any such arrangements as are referred to in paragraph (a) or (b) of that subsection, to refer those arrangements to the Director General of Fair Trading, and
- (b) in the case of any such modification as is so referred to, to inform him of that modification;

and Schedule 4 to this Act shall have effect with respect to any reference made under paragraph (a) above and matters arising out of any such reference, including the subsequent modification of the arrangements to which it relates.

(13) In this section “the relevant date” means the date which the Commission determine to be that by which any such arrangements as are mentioned in subsection (4) would need to have been made by the holders of regional Channel 3 licences in order for the arrangements to be fully in operation at the time when those persons begin to provide their licensed services.

#### Textual Amendments

**F50** S. 39(9A) inserted (1.10.1996) by 1996 c. 55, s. 79(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4 Sch. 1

**F51** S. 39(10) substituted (1.10.1996) by 1996 c. 55, s. 79(3) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

### *Enforcement of licences*

#### **40 Power to direct licensee to broadcast correction or apology or not to repeat programme.**

(1) If the Commission are satisfied—

- (a) that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence, and
- (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or apology (or both) under this subsection,

they may (subject to subsection (2)) direct the licence holder to include in the licensed service a correction or apology (or both) in such form, and at such time or times, as they may determine.

(2) The Commission shall not give any person a direction under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(3) Where the holder of a licence includes a correction or apology in the licensed service in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.

(4) If the Commission are satisfied that the inclusion by the holder of a Channel 3 or Channel 5 licence of any programme in the licensed service involved a failure by him to comply with any condition of the licence, they may direct him not to include that programme in that service on any future occasion.

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- (5) This section shall apply in relation to Channel 4 as if any reference to a Channel 3 licence were a reference to the licence to provide Channel 4.

**Modifications etc. (not altering text)**

- C32** S. 40(1)-(4) applied (1.10.1996) by 1996 c. 55, s. 23(8) (with s. 43(1)(6)); S.I.1996/2120, art. 4, Sch.1  
 S. 40(1)-(4) applied (1.10.1996) by 1996 c. 55, s. 27(8) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**41 Power to impose financial penalty or shorten licence period.**

- (1) If the Commission are satisfied that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission; or
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a)—
- (a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);
- and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), the Commission may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (5) It is hereby declared that any exercise by the Commission of their powers under subsection (1) of this section in respect of any failure to comply with any condition of a licence shall not preclude any exercise by them of their powers under section 40 in respect of that failure.
- (6) This section shall apply in relation to Channel 4 as if—
- (a) any reference to a Channel 3 licence were a reference to the licence to provide Channel 4; and
  - (b) subsection (1)(b) were omitted.

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## **42 Power to revoke Channel 3 or 5 licence.**

- (1) If the Commission are satisfied—
  - (a) that the holder of a Channel 3 or Channel 5 licence is failing to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, and
  - (b) that that failure is such that, if not remedied, it would justify the revocation of the licence,they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
  - (a) stating that the Commission are satisfied as mentioned in subsection (1);
  - (b) specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and
  - (c) stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, the Commission will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Commission are satisfied—
  - (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,they shall (subject to subsection (8)) serve on that person a notice revoking his licence.
- (4) If the Commission are satisfied in the case of any Channel 3 or Channel 5 licence—
  - (a) that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and
  - (b) that it is appropriate for them to do so,they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (5) If the Commission are satisfied—
  - (a) that the holder of a Channel 3 or Channel 5 licence provided them, in connection with his application for the licence, with information which was false in a material particular, or
  - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,they may (subject to subsection (8)) serve on him a notice revoking his licence.
- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.
- (7) If it appears to the Commission to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.
- (8) The Commission shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

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**Modifications etc. (not altering text)**

- C33** S. 42 modified (1.10.1996) by 1996 c. 55, s. 4(5)(6) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- C34** S. 42 extended (with modifications) (1.10.1996) by 1996 c. 55, s. 17(6) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- C35** S. 42 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 23(8)(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- S. 42 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 27(8)(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- S. 42 applied (1.10.1996) by 1996 c. 55, s. 27(8) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

[<sup>F52</sup>CHAPTER IIA

RESTRICTED SERVICES

**Textual Amendments**

- F52** Chapter heading and Ss. 42A, 42B inserted (1.4.1997) by 1996 c. 55, s. 85 (with s. 43(1)(6)); S.I. 1997/1005, art. 4

**42A Restricted services.**

In this Part “restricted service” means a service which—

- (a) consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom, and
- (b) is provided on a frequency or frequencies assigned to the Commission under section 65.

**42B Licensing etc. of restricted services.**

- (1) An application for a licence to provide a restricted service shall be made in such manner as the Commission may determine, and shall be accompanied by such fee (if any) as the Commission may determine.
- (2) Subject to subsections (3) and (4), sections 40 to 42 shall apply in relation to such a licence as they apply in relation to a licence to provide a Channel 3 service.
- (3) In its application to a licence to provide a restricted service, section 41 shall have effect with the omission of subsection (2); and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section shall not exceed whichever is the greater of—
  - (a) £50,000, and
  - (b) the amount determined under subsection (4).
- (4) The amount referred to in subsection (3)(b) is—
  - (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue

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for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and

- (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);

and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).]

### CHAPTER III

#### SATELLITE TELEVISION SERVICES

#### [<sup>F53</sup>43 Satellite television services.

- (1) In this Part “satellite television service” means a service which consists in the transmission for general reception of television programmes by satellite and which—
- (a) is provided by a person who is established in the United Kingdom, or
  - (b) is provided, in circumstances falling within subsection (2), by a person who is not established in any EEA State.
- (2) A service is provided in circumstances falling within this subsection if—
- (a) it is provided by means of—
    - (i) an allocated frequency, or
    - (ii) satellite capacity granted by the United Kingdom, or
  - (b) it is transmitted from a place in the United Kingdom.
- (3) For the purposes of this Act a service consisting in the transmission of television programmes by satellite shall, subject to subsection (4), be regarded as provided by the person who is in a position to determine what is to be included in the service.
- (4) For the purposes of this Act any satellite television service which is composed by, and transmitted for, a BBC company, a Channel 4 company or an S4C company shall be regarded as provided by that company and not by the relevant broadcasting body (even if the relevant broadcasting body is in a position to determine what is to be included in the service).
- (5) In this section—
- “allocated frequency” means a frequency allocated to the United Kingdom for broadcasting by satellite;
  - “relevant broadcasting body” means—
    - (a) in relation to a BBC company, the BBC,
    - (b) in relation to a Channel 4 company, the Channel Four Television Corporation, and
    - (c) in relation to an S4C company, the Welsh Authority.]

#### Textual Amendments

**F53** S. 43 substituted (11.7.1997) by S.I. 1997/1682, arts. 1(2), 2, Sch. para 3

*Status: Point in time view as at 11/07/1997. This version of this Act contains provisions that are not valid for this point in time.  
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**F54 44 Licensing etc. of domestic satellite services.**

**Textual Amendments**  
**F54 S. 44** repealed (11.7.1997) by S.I. 1997/1682, arts. 1(2), 2, Sch. para. 4

**45 Licensing etc. of [F55 satellite television]services.**

- (1) An application for a licence to provide a [F56 satellite television]service shall—
  - (a) be made in such manner as the Commission may determine; and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) Where such an application is duly made to the Commission, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 6(1).
- [F57(3) Without prejudice to the generality of section 3(2), a licence to provide a satellite television service may authorise the provision of a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies.]
- (4) Any licence granted by the Commission to provide a [F56 satellite television]service shall (subject to the provisions of this Part) continue in force for a period of ten years.
- (5) Subject to subsections (6) [F58to] (7), sections 40 to 42 shall apply in relation to such a licence as they apply in relation to a licence to provide a Channel 3 service.
- (6) In its application in relation to a licence to provide a [F56 satellite television] service, section 41 shall have effect with the omission of subsection (2); and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section [F59 shall not exceed whichever is the greater of—
  - (a) £50,000, and
  - (b) the amount determined under subsection (6A).
- (6A) The amount referred to in subsection (6)(b) is—
  - (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);
 and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).]

(7) Section 42 shall apply in relation to such a licence with the omission of subsection (7).

<sup>F60</sup>(8) .....

<sup>F60</sup>(9) .....



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#### Textual Amendments

- F55** Words in sidenote to s. 45 substituted (11.7.1997) by S.I. 1996/1682, reg. 2, **Sch. para.5(2)**  
**F56** Words in s. 45(1)(4)(6) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 5(2)**  
**F57** S. 45(3) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 5(3)**  
**F58** Word in s. 45(5) substituted (24.7.1996 ) by 1996 c. 55, **ss. 88(2)**, 149(1)(e) (with s. 43(1)(6))  
**F59** Words and s. 45(6A) substituted (24.7.1996) for words in s. 45(6) by 1996 c. 55, **ss. 88(3)**, 149(1)(e) (with s. 43(1)(6))  
**F60** S. 45(8)(9) repealed (24.7.1996) by 1996 c. 55, **ss. 88(4)**, 149(1)(i), **Sch. 11 Pt. I** (with s. 43(1)(6))

#### [<sup>F61</sup>45A Special power of revocation and suspension on certain grounds in case of licence to provide [<sup>F62</sup>satellite television] service.

- (1) If the Commission are satisfied—
- that the holder of a licence to provide a [<sup>F63</sup>satellite television]service has included in the service one or more programmes containing material likely to encourage or incite to crime or to lead to disorder,
  - that he has thereby failed to comply with a condition included in the licence in pursuance of section 6(1)(a), and
  - that the failure is such as to justify the revocation of the licence,
- they shall serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
- stating that the Commission are satisfied as mentioned in subsection (1),
  - specifying the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned in paragraph (b) of that subsection,
  - stating that the Commission may revoke his licence after the end of the period of twenty-one days beginning with the date on which the notice is served on the licence holder,
  - informing the licence holder of his right to make representations to the Commission within that period about the matters complained of, and
  - suspending the licence as from the time when the notice is served on the licence holder until the revocation takes effect or the Commission decide not to revoke the licence.
- (3) If the Commission, having considered any representations about the matters complained of made to them within the period referred to in subsection (2)(c) by the licence holder, are satisfied that it is necessary in the public interest to revoke the licence in question, they shall serve on the licence holder a notice revoking the licence.
- (4) A notice under subsection (3) shall not take effect until the end of the period of twenty-eight days beginning with the day on which that notice was served on the licence holder.
- (5) Section 42 (as applied by section 45(5)) shall not have effect in relation to the revocation of a licence in pursuance of a notice under subsection (1).]

#### Textual Amendments

- F61** S. 45A inserted (1.11.1996) by 1996 c. 55, **s. 89** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**  
**F62** Sidenote in s. 45A substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 6**

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**F63** Words in s. 45A(1)(a) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, Sch. para. 6

## CHAPTER IV

### LICENSABLE PROGRAMME SERVICES

#### 46 Licensable programme services.

(1) In this Part “licensable programme service” means (subject to subsection (2)) a service consisting in the provision by any person of relevant programmes with a view to their being conveyed by means of a telecommunication system—

- (a) for reception in two or more dwelling-houses in the United Kingdom otherwise than for the purpose of being received there by persons who have a business interest in receiving them, or
- (b) for reception at any place, or for simultaneous reception at two or more places, in the United Kingdom for the purpose of being presented there either to members of the public or to a group or groups of persons some or all of whom do not have a business interest in receiving them,

whether the telecommunication system is run by the person so providing the programmes or by some other person, and whether the programmes are to be so conveyed as mentioned in paragraph (a) for simultaneous reception or for reception at different times in response to requests made by different users of the service.

(2) Subsection (1) does not apply to—

- (a) a service where the programmes are provided for transmission in the course of the provision of a television broadcasting service [<sup>F64</sup>a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996), a restricted service][<sup>F65</sup>, a satellite television service or an EEA satellite service];
- (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the <sup>M4</sup>Telecommunications Act 1984; or
- (c) a two-way service, that is to say a service of which it is an essential feature that while visual images or sounds (or both) are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same telecommunication system or (as the case may be) the part of it by means of which they are conveyed, visual images or sounds (or both) for reception by the person providing the service or other persons receiving it (other than signals sent for the operation or control of the service).

(3) It is hereby declared that the person who does either or both of the following things, that is to say—

- (a) uses a telecommunication system for conveying relevant programmes as mentioned in subsection (1), or
- (b) runs a telecommunication system which is so used,

is not to be regarded as providing a licensable programme service in respect of any such programmes except to the extent that they are provided by that person with a view to their being so conveyed by means of that system.

(4) It is hereby also declared that where—

- (a) any service constitutes such a service as is mentioned in subsection (1), and

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- (b) the relevant programmes in respect of which the service is provided are provided for transmission in the course of the provision of any additional service,

that service is licensable under section 47 as a licensable programme service, and not otherwise; and in this subsection “additional service” means an additional service within the meaning of this Part or Part III.

- (5) In this section “relevant programme” means a television programme other than one consisting wholly or mainly of non-representational images (within the meaning of section 2(6)); and for the purposes of this section a person has a business interest in receiving programmes if he has an interest in receiving them for the purposes of his business, trade, profession or employment.

[<sup>F66</sup>(6) In this section “EEA satellite service” means any service which—

- (a) consists in the transmission of television programmes by satellite, and  
(b) is provided by a person established in an EEA State other than the United Kingdom.]

#### Textual Amendments

**F64** Words in S. 46(2)(a) inserted (1.10.1996 for certain purposes otherwise 1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 16**; S.I. 1996/2120, art. 4, **Sch. 1**; S.I. 1997/1005, art. 4

**F65** Words in S. 46(2)(a) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 7(2)**

**F66** S. 46(6) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 7(3)**

#### Marginal Citations

**M4** 1984 c. 12.

## 47 Licensing etc. of licensable programme services.

- (1) An application for a licence to provide a licensable programme service shall—
- (a) be made in such manner as the Commission may determine; and
- (b) be accompanied by such fee (if any) as they may determine.
- (2) Where such an application is duly made to the Commission, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 6(1) (whether the Commission were to make a determination under subsection (4) below or not).
- (3) Any licence granted by the Commission to provide a licensable programme service shall (subject to the provisions of this Part) continue in force for such period not exceeding ten years as may be specified in the licence.
- (4) If the Commission—
- (a) are satisfied that a particular licensable programme service is to be provided with a view to its programmes being conveyed for reception only in a particular area or locality in the United Kingdom, and
- (b) consider that it is appropriate to do so,
- they may, when licensing the service, determine that section 6 shall, in its application in relation to that service, have effect subject to the modifications specified in subsection (5).

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- (5) The modifications of section 6 are as follows—
- (a) the following paragraph shall be substituted for paragraph (c) of subsection (1)—
 

“(c) that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on matters of political or industrial controversy or relating to current public policy;”
  - (b) the following subsection shall be substituted for subsection (2)—
 

“(2) In applying subsection (1)(c) to any licensed service, the programmes included in that service shall be taken as a whole.”
- and
- (c) the following provisions shall be omitted, namely—
    - (i) subsections (3) and (5) to (7), and
    - (ii) in subsection (4), the words from the beginning to “subsection (1),”.
- (6) The Commission shall—
- (a) draw up, and from time to time review, a code giving guidance as to the rules to be observed in connection with the application of section 6(1)(c) (as substituted by subsection (5) above) in relation to a service in respect of which a determination under subsection (4) above is in force; and
  - (b) do all that they can to secure that the provisions of the code are observed in the provision of any such service.
- (7) The Commission shall publish the code drawn up under subsection (6), and every revision of it, in such manner as they consider appropriate.
- (8) Subject to subsections (9) [<sup>F67</sup>to] (10), sections 40 to 42 shall apply in relation to a licence to provide a licensable programme service as they apply in relation to a licence to provide a Channel 3 service.
- (9) In its application in relation to such a licence, section 41 shall have effect with the omission of subsection (2); and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section [<sup>F68</sup>shall not exceed whichever is the greater of—
- (a) £50,000, and
  - (b) the amount determined under subsection (9A).
- (9A) The amount referred to in subsection (9)(b) is—
- (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);
- and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).]
- (10) Section 42 shall apply in relation to such a licence with the omission of subsection (7).

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F69(11) .....

F69(12) .....

**Textual Amendments**

- F67** Word in S. 47(8) substituted (24.7.1996) by 1996 c. 55, ss. 90(2), 149(1)(e) (with s. 43(1)(6))
- F68** Words in S. 47(9) substituted and subsection (9A) inserted (24.7.1996) by 1996 c. 55, ss. 90(3), 149(1)(e) (with s.43(1)(6))
- F69** S. 47(11)(12) repealed (24.7.1996) by 1996 c. 55, ss. 90(4), 148(2), 149(1)(i), Sch. 11 Pt. I (with s. 43(1)(6))

**CHAPTER V**

**ADDITIONAL SERVICES PROVIDED ON TELEVISION BROADCASTING FREQUENCIES**

**48 Additional services.**

- (1) In this Part “additional service” means any service which consists in the sending of telecommunication signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any television broadcasting service provided—
  - (a) on any frequency assigned under section 65(1) (other than a frequency which, in pursuance of section 73(2), is assigned by the Commission to a local delivery service within the meaning of Part II), or
  - (b) on any other allocated frequency notified to the Commission by the Secretary of State.
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be—
  - (a) where the service is provided on a frequency falling within subsection (1)(a) above, any part of those signals which is not required for the purposes of the provision of that service and is determined by the Commission to be available for the provision of additional services;
  - (b) where the service is provided on a frequency notified to the Commission under subsection (1)(b) above, such part of those signals as the Secretary of State may specify when making the notification;and references in this Part to spare capacity shall be construed accordingly.
- (3) The Commission shall, when determining under subsection (2)(a) the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency, have regard—
  - (a) if it is a frequency on which a Channel 3 service or Channel 5 is provided, to the obligations of the person providing that service as respects the provision of subtitling in accordance with conditions imposed in pursuance of section 35;
  - (b) if it is a frequency on which Channel 4 is provided, to the need for subtitling to be provided in connection with programmes on Channel 4; and
  - (c) if it is a frequency falling within either of paragraphs (a) and (b), to any need of the person providing the service in question to be able to use part of the signals carrying it for providing services (other than subtitling) which are ancillary

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to programmes included in the service and directly related to their contents [F70 or relate to the promotion or listing of such programmes].

- (4) A person holding a licence to provide a Channel 3 service or Channel 4 or 5 shall be taken for the purposes of this Part to be authorised by his licence—
- (a) to provide subtitling as mentioned in subsection (3)(a) or (b); and
  - (b) to provide any such services as are mentioned in subsection (3)(c).

- (5) The Secretary of State may, when making any notification under subsection (1)(b), specify a date beyond which the frequency in question is not to be used for the provision of additional services; and any such notification shall accordingly cease to have effect on that date.

- (6) In this section—

“allocated frequency” means a frequency allocated to the United Kingdom for the provision of television broadcasting services;

“subtitling” means subtitling for the deaf provided by means of a teletext service; and

“telecommunication signals” means anything falling within paragraphs (a) to (d) of section 4(1) of the <sup>M5</sup>Telecommunications Act 1984 (meaning of “telecommunication system”).

#### Textual Amendments

**F70** Words in S. 48(3)(c) inserted (1.11.1996) by 1996 c. 55, s. 87 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

#### Marginal Citations

**M5** 1984 c. 12.

## 49 Licensing of additional services.

- (1) Subject to subsection (2), the Commission shall do all that they can to secure that, in the case of each of the following frequencies, namely—
- (a) any frequencies falling within section 48(1)(a) on which television broadcasting services are provided, and
  - (b) any frequencies notified to the Commission under section 48(1)(b),
- all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by the Commission in accordance with this section.
- (2) The Commission shall do all that they can to secure, in relation to the combined spare capacity available for the provision of additional services on frequencies on which Channel 3 services and Channel 4 are respectively provided, that a single teletext service is provided on that spare capacity; but any such service shall be provided only on so much of that spare capacity as the Secretary of State may approve.
- (3) In relation to so much of any such service as is provided for reception wholly or mainly in Wales, references in subsection (2) to any such combined spare capacity as is there mentioned shall be construed as references to the spare capacity available for the provision of additional services on frequencies on which S4C is provided; and the

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Secretary of State shall exercise his powers under section 48(1)(b) and (2)(b) in such manner as he considers appropriate to take account of this subsection.

- (4) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.
- (5) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Commission may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (6) Subsection (5) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act.
- (7) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (5) as they apply in relation to the provision of such services by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.
- (8) Every licence under this Part to provide a television broadcasting service shall include such conditions as appear to the Commission to be appropriate for securing that the licence holder grants—
  - (a) to any person who holds a licence to provide additional services on the frequency on which that broadcasting service is provided, and
  - (b) to any person who is authorised by any such person as mentioned in subsection (5) to provide additional services on that frequency,
 access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.
- (9) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (8) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by the Commission.
- (10) In this Part “additional services licence” means a licence to provide additional services.

## 50 Applications for additional services licences.

- (1) Where the Commission propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the television broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (ii) (subject to the approval of the Secretary of State) the extent and nature of the spare capacity which is to be allocated by the licence;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—

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- (i) the fee payable on any application made in pursuance of the notice, and
  - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 52(1)(c) if he were granted the licence.
- (2) The Commission may, if they think fit, specify under subsection (1)(d)(ii)—
- (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan indicating—
    - (i) the nature of any additional services which the applicant proposes to provide, and
    - (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 49(5);
  - (c) the applicant's cash bid in respect of the licence; and
  - (d) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
  - (c) such other information connected with his application as the Commission consider appropriate.
- (7) The provisions of this section and sections 51 and 53 shall, in relation to the teletext service referred to in section 49(2), have effect subject to the provisions of Schedule 5 to this Act.

## **51 Procedure to be followed by Commission in connection with consideration of applications for, and awarding of, licences.**

- (1) Where a person has made an application for an additional services licence in accordance with section 50, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—



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- (a) that the technical plan submitted under section 50(3)(b) is, so far as it involves the use of any telecommunication system, acceptable to the relevant licensing authorities; and
  - (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;
- and any reference to an applicant in section 17 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Before forming any view as to whether the requirement specified in subsection (1) (a) is satisfied in the case of an applicant the Commission shall consult the relevant licensing authorities.
  - (3) Subject to subsection (4), [F71section 17 and 17A]shall apply in [F71relation to an additional services licence as [F71they apply] in relation to a Channel 3 licence.
  - (4) In the application of section 17 in relation to an additional services licence—
    - (a) the provisions of subsection (4) down to the end of paragraph (b) shall be omitted;
    - (b) in subsection (7)(a), the reference to section 19(1) shall be construed as a reference to section 52(1); and
    - (c) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b)—
      - “(b) the name of every other applicant in whose case it appeared to the Commission that the requirement specified in section 51(1)(a) was satisfied;”.
  - (5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—
    - (a) that person indicates to the Commission that none of the services in question will be provided once the licence has come into force, or
    - (b) the Commission for any other reason have reasonable grounds for believing that none of those services will be so provided,then, subject to subsection (6)—
    - (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
    - (ii) section 17 (as applied by subsection (3) above) shall, subject to section 17(14), have effect as if he had not made an application for the licence.
  - (6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that none of the services in question will be provided once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
  - (7) In this section “the relevant licensing authorities” means the Secretary of State and the Director General of Telecommunications.

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### Textual Amendments

**F71** Words in S. 51(3) substituted (1.10.1996) by 1996 c. 55, s. 86(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

## 52 Additional payments to be made in respect of additional services licences.

- (1) An additional services licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b))—
  - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 50(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
  - (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
  - (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
  - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
 any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

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**53 Duration of licences, and renewal of licences for provision of services on assigned frequencies.**

(1) A licence for the provision of additional services on a frequency notified to the Commission under section 48(1)(b) shall not continue in force beyond such date as may be specified by the Secretary of State in relation to that frequency under section 48(5); and a licence for the provision of such services on a frequency assigned under section 65(1)—

- (a) shall, subject to the provisions of this Part, continue in force for a period of ten years, and
- (b) may (subject to the following provisions of this section) be renewed on one or more occasions for a period of ten years beginning with the date of renewal.

(2) An application for the renewal of a licence under subsection (1) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.

<sup>F72</sup>(3) .....

(4) Where an application is made for the renewal of a licence under subsection (1) before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (9).

(5) Where an application for the renewal of an additional services licence has been duly made to the Commission, they may only (subject to subsection (6)) refuse the application if—

- (a) they are not satisfied that any additional service specified in the technical plan submitted under section 50(3)(b) would, if the licence were renewed, be provided as proposed in that plan, or
- (b) they propose to grant a fresh additional services licence for the provision of any additional service which would differ in any material respect from any such service authorised to be provided under the applicant’s licence, or
- (c) they propose to determine that all or part of the spare capacity allocated by the licence is to cease to be available for the provision of additional services in order that it may be used by any relevant person for the purpose of enhancing the technical quality of his television broadcasting service;

and in paragraph (c) “relevant person” means the person providing a television broadcasting service on whose frequency the licensed service has been provided.

(6) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of an additional services licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), but as if—

- (a) any reference to the awarding of a Channel 3 licence to the applicant were a reference to the renewal of the applicant’s licence under this section; and
- (b) in section 17(7), the reference to section 19(1) were a reference to section 52(1).

(7) On the grant of any such application the Commission—

- (a) shall determine an amount which is to be payable to the Commission by the licence holder in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
- (b) may specify a different percentage from that specified under section 50(1)(d)
  - (ii) as the percentage of qualifying revenue for each accounting period of his

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- that will be payable by the applicant in pursuance of section 52(1)(c) during the period for which the licence is to be renewed;
- and the Commission may specify under paragraph (b) either of the things mentioned in section 50(2).
- (8) The amount determined by the Commission under subsection (7)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 52(1)(a) if they were granting a fresh licence to provide the additional services in question.
- (9) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) the amount determined by them under subsection (7)(a), and
  - (b) any percentage specified by them under subsection (7)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (10) Where an additional services licence is renewed under this section—
- (a) any conditions included in it in pursuance of section 52 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Commission under subsection (7)(a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (7)(b) above; and
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which an additional services licence is originally in force.
- (11) In this section “the relevant date”, in relation to an additional services licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 50 if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the additional services formerly provided under that licence.

#### Textual Amendments

**F72** S. 53(3) repealed (11.7.1997) by [S.I. 1997/1682](#), reg. 2, [Sch. para.8](#)

#### 54 Additional services not to interfere with other transmissions.

- (1) An additional services licence may include such conditions as the Commission consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
- (a) the television broadcasting service or services on whose frequency or frequencies it is provided, or
  - (b) any other wireless telegraphy transmissions.
- (2) Before imposing any conditions in pursuance of subsection (1) the Commission shall consult the relevant licensing authorities (within the meaning of section 51).

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## **55 Enforcement of additional services licences.**

- (1) If the Commission are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)—
  - (a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period falling within the relevant period (as determined in accordance with section 52(2)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);and, in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Commission shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Section 42 shall apply in relation to an additional services licence as it applies in relation to a licence to provide a Channel 3 service, but with the omission of subsection (7).

## **CHAPTER VI**

### **TELEVISION BROADCASTING BY WELSH AUTHORITY**

## **56 Welsh Authority to continue in existence as Sianel Pedwar Cymru.**

- (1) The authority which at the commencement of this section is called the Welsh Fourth Channel Authority shall continue in existence as a body corporate but—
  - (a) shall be known as Sianel Pedwar Cymru (or S4C); and
  - (b) shall be constituted in accordance with, and have the functions conferred by, this Act;and in this Act references to the Welsh Authority are references to that authority.
- (2) The Welsh Authority shall consist of—
  - (a) a chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than four nor more than eight, as he may from time to time determine.
- (3) Schedule 6 to this Act shall have effect with respect to the Welsh Authority.

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## 57 Function and duties of Welsh Authority.

- (1) The function of the Welsh Authority shall be to provide a television broadcasting service of high quality for reception wholly or mainly in Wales to be known as Sianel Pedwar Cymru (or S4C); and in this Part references to S4C are references to that service.

[<sup>F73</sup>(1A) The Welsh Authority shall also have power—

- (a) (subject to and in accordance with Part I of the Broadcasting Act 1996) to provide a further service as a qualifying service (within the meaning of that Part), and to arrange for the broadcasting of that service in digital form, and
- (b) to establish qualifying companies, to purchase or otherwise acquire shares, stocks or other securities of qualifying companies and to assist any qualifying company.

(1B) In subsection (1A)(b) “qualifying company” means any company (whether incorporated under the law of the United Kingdom or of any other country) which is or will be wholly or mainly engaged in one or more of the following activities—

- (a) the provision of one or more services which are licensed by the Commission or by the Radio Authority or which, if provided in the United Kingdom, would be required to be so licensed,
- (b) activities incidental to such provision, and
- (c) the holding of shares in any other company which is wholly or mainly engaged in such provision or in activities incidental to such provision.]

(2) It shall be the duty of the Welsh Authority—

- (a) to provide S4C as a public service for disseminating information, education and entertainment;
- (b) to ensure that a substantial proportion of the programmes broadcast on S4C are in Welsh and that the programmes broadcast on S4C between 6.30 pm and 10 pm consist mainly of programmes in Welsh; and
- (c) to ensure that the programmes in Welsh which are broadcast on S4C maintain—
  - (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
  - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.

(3) The Welsh Authority shall secure that, during any period allocated by them to the broadcasting of a programme not in Welsh, the programme broadcast by them on S4C is normally a programme which is being, has been or is to be broadcast on Channel 4.

(4) The Welsh Authority may use part of the signals carrying S4C to provide—

- (a) subtitling in connection with programmes on S4C, and
- (b) other services which are ancillary to such programmes and directly related to their contents;

and in this subsection “subtitling” means any subtitling provided by means of a teletext service.

(5) In this section and section 58 “programme” does not include an advertisement.

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#### Textual Amendments

**F73** S. 57(1A)(1B) inserted (1.10.1996) by 1996 c. 55, s. 84(3) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

#### Modifications etc. (not altering text)

**C36** S. 57(1A)(a) applied (1.10.1996) by 1996 c. 55, s. 84(3) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**C37** S. 57(4) applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

### 58 Sources of programmes for S4C.

- (1) For the purpose of enabling the Welsh Authority to comply with their duty under section 57(2)(b) it shall be the duty of the BBC to provide the Authority (free of charge) with sufficient television programmes in Welsh to occupy not less than ten hours' transmission time per week, and to do so in a way which meets the reasonable requirements of the Authority.
- (2) It shall be the duty of the Channel Four Television Corporation—
  - (a) to provide the Welsh Authority with programme schedules for the programmes broadcast on Channel 4, including information as to the periods available for the broadcasting of advertisements, far enough in advance to enable the Welsh Authority to comply with section 57(3); and
  - (b) to provide the Welsh Authority (free of charge) with any programmes which are required by the Authority for the purpose of complying with that provision.
- (3) The programmes broadcast on S4C may, to the extent that they are not provided under subsection (1) or (2), be obtained by the Welsh Authority from such persons as they think fit.
- (4) Where any programmes provided under subsection (2) each form part of a series of programmes, the Welsh Authority shall ensure that the intervals between those programmes when broadcast on S4C normally correspond to the intervals between them when broadcast on Channel 4.
- (5) The Welsh Authority shall publish, in such manner as they consider appropriate, advance notice of the programme schedules for the programmes to be broadcast on S4C.

#### Modifications etc. (not altering text)

**C38** S. 58(5) applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

### 59 Requirements to be complied with in relation to S4C programmes.

- (1) The Welsh Authority shall ensure that the following requirements are complied with in relation to S4C, namely—
  - (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;

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- (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality;
  - (c) that due impartiality is preserved on the part of the Authority as respects matters of political or industrial controversy or relating to current public policy;
  - (d) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those watching the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and
  - (e) that its programmes do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.
- (2) In applying subsection (1)(c) a series of programmes may be considered as a whole.
- (3) Without prejudice to the generality of subsection (1), the Welsh Authority shall ensure that there are excluded from the programmes broadcast on S4C all expressions of the views and opinions of the Authority on matters (other than broadcasting) which are of political or industrial controversy or relate to current public policy.
- (4) The code referred to in section 6(3) shall have effect in relation to the application of subsection (1)(c) above in relation to S4C as it has effect in relation to the application of section 6(1)(c) in relation to a licensed service; and the code referred to in section 7 shall have effect in relation to S4C as it has effect in relation to a licensed service.
- (5) The Welsh Authority shall observe the provisions of those codes (as they have effect in accordance with subsection (4)) in the provision of S4C.

**Modifications etc. (not altering text)**

**C39** S. 59 applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**60 Advertising on S4C.**

- (1) The Welsh Authority shall ensure that the following rules are complied with in relation to S4C, namely—
- (a) S4C must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or
    - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in S4C there must be no unreasonable discrimination either against or in favour of any particular advertiser; and



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- (c) (except in the case of any programme to which the Welsh Authority determine that this paragraph is not to apply) S4C must not include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the Welsh Authority are prohibited from advertising by virtue of subsection (2) or (4) below.
- (2) The code under section 9 shall have effect in relation to advertisements broadcast on S4C as it has effect in relation to advertisements broadcast on Channel 4; and the Welsh Authority shall observe the provisions of that code (as it so has effect) in the provision of S4C.
- (3) Where the Commission give any directions under subsection (7) of that section to the Channel Four Television Corporation, they shall send a copy of those directions to the Welsh Authority; and, so long as the directions remain in force, the Welsh Authority shall, in broadcasting advertisements on S4C, give effect to the provisions of the directions as if they were provisions regulating the times when advertisements are to be allowed to be broadcast on S4C.
- (4) The Welsh Authority shall—
- (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be broadcast on S4C and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of S4C; and
- (b) carry out any directions which he may give to them in respect of such matters.
- (5) The Welsh Authority shall not act as an advertising agent.
- (6) After consultation with the Welsh Authority the Secretary of State may make regulations amending, repealing or adding to the rules specified in subsection (1); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.

**Modifications etc. (not altering text)**

**C40** S. 60 applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

[<sup>F74</sup>61 **Funding of Welsh Authority.**

- (1) The Secretary of State shall, in the year 1998 and in each subsequent year, pay to the Welsh Authority the prescribed amount as increased by the appropriate percentage.
- (2) In this section “the prescribed amount” means the 1997 amount or such amount as may from time to time be prescribed under subsection (4).
- (3) In this section “the 1997 amount” means the amount paid by the Secretary of State to the Welsh Authority by way of interim payment for the year 1997 (under this section as originally enacted).
- (4) The Secretary of State may, if he is satisfied that it is appropriate to do so having regard to the cost to the Welsh Authority of transmitting S4C and the service referred to in section 57(1A)(a), by order provide that the prescribed amount is to be an amount which is greater than the 1997 amount and is specified in the order.

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- (5) Before making an order under subsection (4) the Secretary of State shall consult the Welsh Authority.
- (6) In this section “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—
  - (a) the retail prices index for November 1996, and
  - (b) the retail prices index for the month of November in the year preceding the relevant year;
 and for this purpose “the retail prices index” has the same meaning as in section 19(10).
- (7) Any sums required by the Secretary of State under this section shall be paid out of money provided by Parliament.
- (8) An order shall not be made under subsection (4) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F74** S. 61 substituted (24.7.1996) by 1996 c. 55, ss. 80(1), 149(1)(c) (with s. 43(1)(6), 80(3))

#### Modifications etc. (not altering text)

**C41** S. 61(3)(4) restricted (24.7.1996) by 1996 c. 55, ss. 80(4), 149(c)

### [<sup>F75</sup>61A Welsh Authority public service fund.

- (1) The Welsh Authority shall not exercise their powers under section 57(1A)(b) before such date (in this section referred to as “the notified date”) as they may notify to the Secretary of State for the purposes of this section.
- (2) All amounts received by the Welsh Authority under section 61 on or after the notified date shall be kept by the Authority in a separate fund (in this section referred to as “the public service fund”) which may be applied only for the purposes of their functions under section 57(1) or (1A)(a).
- (3) No S4C company shall receive any direct or indirect subsidy from the public service fund.
- (4) The Welsh Authority shall secure that no television programme which has been wholly or partly financed out of the public service fund is included in a television programme service provided by an S4C company before it is first broadcast on S4C or in the service referred to in section 57(1A)(a).
- (5) On the notified date—
  - (a) all the assets then held by the Welsh Authority other than cash, together with the appropriate proportion of any cash then held by them, shall be taken to be comprised in the public service fund, and
  - (b) the remainder of any cash then held by the Authority shall be taken to be comprised in a general fund.
- (6) In subsection (5)(a) “the appropriate proportion” means the proportion which, in the last financial year in respect of which a statement of accounts has been prepared under paragraph 12(1) of Schedule 6 before the notified date, the total amount received by

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the Welsh Authority under section 61 bears to the total amount of its income from all sources.]

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**Textual Amendments**

**F75** S. 61A inserted (1.10.1996) by 1996 c. 55, s. 81(1); S.I. 1996/2120, art. 4 Sch. 1

**62 Information to be supplied to Commission by Welsh Authority.**

The Welsh Authority shall provide the Commission with such forecasts, estimates, information and documents as the Commission may reasonably require for the purpose of enabling them to perform their functions under [<sup>F76</sup>section 26]

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**Textual Amendments**

**F76** Words in S. 62 substituted (24.7.1996) by 1996 c. 55, ss. 80(2), 149(1)(c) (with s. 80(3))

**63 Government control over S4C.**

- (1) If it appears to him to be necessary or expedient to do so in connection with his functions as such, the Secretary of State or any other Minister of the Crown may at any time by notice require the Welsh Authority to broadcast, at such times as may be specified in the notice, any announcement specified in the notice, with or without visual images of any picture, scene or object mentioned in the announcement; and it shall be the duty of the Authority to comply with the notice.
- (2) Where the Welsh Authority broadcast any announcement in pursuance of a notice under subsection (1), they may announce that they are doing so in pursuance of such a notice.
- (3) The Secretary of State may at any time by notice require the Welsh Authority to refrain from broadcasting any matter or classes of matter specified in the notice; and it shall be the duty of the Authority to comply with the notice.
- (4) Where the Secretary of State has given the Welsh Authority a notice under subsection (3), the Authority may broadcast an announcement of the giving of the notice or, when it has been revoked or has expired, of its revocation or expiration.
- (5) The powers conferred by this section are in addition to any power specifically conferred on the Secretary of State by any other provision of this Act.

**64 Audience research by Welsh Authority.**

- (1) The Welsh Authority shall make arrangements for ascertaining—
  - (a) the state of public opinion concerning programmes broadcast on S4C;
  - (b) any effects of such programmes on the attitudes or behaviour of persons who watch them; and
  - (c) the types of programme that members of the public would like to be broadcast on S4C.
- (2) Those arrangements shall—

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- (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Welsh Authority; and
- (b) include provision for full consideration by the Authority of the results of any such research.

**Modifications etc. (not altering text)**

**C42** S. 64 applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

## CHAPTER VII

### SUPPLEMENTAL

#### **65 Assignment of frequencies by Secretary of State.**

- (1) The Secretary of State may by notice assign to the Commission, for the purpose of the provision of services falling to be licensed by them under this Part or Part II, such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more of those services.
- (2) Any frequency assigned by the Secretary of State under subsection (1) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (3) The Secretary of State may by notice assign to the Welsh Authority for the purpose of the provision of S4C such frequencies as he may determine; and any such frequencies shall be taken to be so assigned for the purpose only of being used for the provision of that service and any services which they are authorised to provide by virtue of section 57(4).
- (4) The Secretary of State may by notice revoke the assignment under subsection (1) or (3) of any frequency specified in the notice, and (in the case of a frequency assigned to the Commission) may do so whether or not the frequency is for the time being one on which there is being provided a service licensed under this Part or Part II.

#### **66 Requirements relating to transmission and distribution of services.**

- (1) During such period as the Secretary of State may by order specify, all Channel 3 services shall be broadcast for general reception by a single person under arrangements made with him by the persons licensed to provide those services; and every Channel 3 licence shall include such conditions as appear to the Commission to be appropriate—
  - (a) for securing that result and
  - (b) for securing that the costs incurred in respect of the broadcasting of those services (taken as a whole) during that period in accordance with those arrangements are shared by those persons in such manner as may be approved by the Secretary of State.
- (2) Any Channel 3 licence shall include such conditions as appear to the Commission to be appropriate for securing that the costs incurred in respect of the distribution of

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Channel 3 services (taken as a whole) during such period as the Secretary of State may by order specify are shared by the persons licensed to provide those services in such manner as may be approved by the Secretary of State. In this subsection “distribution”, in relation to Channel 3 services, means the conveyance of those services (by whatever means and whether directly or indirectly) to the broadcasting stations from which they are broadcast for general reception.

- (3) The Secretary of State may, at any time during the period referred to in subsection (1) or (2), by order provide for that period to be extended by such further period as is specified in the order; and any conditions included in a Channel 3 licence in pursuance of that subsection shall accordingly, in any such case, have effect in relation to that period as so extended.
- (4) Any Channel 3 licence or licence to provide Channel 4 or 5 shall include such conditions as appear to the Commission to be appropriate for requiring the signals carrying the licensed service to attain high standards in terms of technical quality and reliability throughout so much of the relevant area as is for the time being reasonably practicable.
- (5) Before imposing any conditions in pursuance of subsection (4) the Commission shall consult the Secretary of State as to how much of the relevant area is to be specified in the conditions as the area throughout which the required standards are to be attained.
- (6) In subsections (4) and (5) “the relevant area”—
  - (a) in relation to a Channel 3 or Channel 5 licence, means the area for which the licensed service is to be provided; and
  - (b) in relation to the licence to provide Channel 4, means England, Scotland and Northern Ireland.
- (7) The Welsh Authority shall do all that they can to ensure that the signals carrying S4C attain high standards in terms of technical quality and reliability throughout so much of Wales as is for the time being reasonably practicable.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F77</sup> **66A Enforcement of licences held by BBC companies.**

- (1) Where the Commission—
  - (a) give a direction to a BBC company under section 40(1),
  - (b) serve a notice on a BBC company under any provision of section 41 or 42, or
  - (c) receive any written representations from a BBC company under section 40(2), 41(3) or 42(8),the Commission shall send a copy of the direction, notice or representations to the Secretary of State.
- (2) References in subsection (1) to any of the provisions of sections 40 to 42 are references to that provision as applied—
  - (a) by section 42B(2), in relation to a licence to provide a restricted service,
  - <sup>F78</sup>(b) .....
  - (c) by section 45(5), in relation to a licence to provide a [<sup>F79</sup>satellite television] service,

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- (d) by section 47(8), in relation to a licence to provide a licensable programme service, or
- (e) by section 55(4), in relation to an additional services licence.]

#### Textual Amendments

- F77** S. 66A inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1)(f), **Sch. 8 para. 3**; (with s. 43(1)(6))
- F78** S. 66A(2)(b) omitted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 9(a)**
- F79** Words in S. 66A(2)(c) substituted (11.7.1997) by S.I. 1997/1682, **reg. 2 Sch. para. 9(b)**

#### 67 Computation of qualifying revenue.

Part I of Schedule 7 (which contains provisions relating to the computation of qualifying revenue for the purposes of this Part and Part II) shall have effect.

#### 68 Certain receipts of Commission to be paid into Consolidated Fund.

- (1) Where, in respect of any licence granted under this Part or Part II, the Commission receive any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Commission but shall—
  - (a) if the licence is for the provision of a service for any area in Great Britain, be paid into the Consolidated Fund of the United Kingdom;
  - (b) if the licence is for the provision of a service for Northern Ireland, be paid into the Consolidated Fund of Northern Ireland; or
  - (c) if the licence is for the provision of a service for the whole or part of Great Britain and for the whole or part of Northern Ireland, be paid into both of those Funds in such proportions as the Commission consider appropriate.
- (2) The amounts referred to in subsection (1) are—
  - (a) any amount payable to the Commission by virtue of section 19(1), 52(1) or 77(1);
  - (b) any amount payable to them by virtue of section 18(3); and
  - (c) any amount payable to them by virtue of section 41(1)(a) or 55(1).
- (3) Any reference in subsection (2)(a), (b) or (c) to any provision of this Part includes a reference to that provision as applied by any other provision of this Part or Part II.
- (4) Subsection (1) shall not be construed as applying to any amount which is required by the Commission for the making of an adjustment in respect of an overpayment made by any person.
- (5) Any amount payable by any person to the Commission under or by virtue of this Part or Part II shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of a licence granted under this Part or Part II, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (6) The Commission shall, in respect of each financial year, prepare an account showing—
  - (a) all such amounts falling within subsection (1) as have been received by them, and

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- (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,

and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

## 69 Frequency planning and research and development.

- (1) The Commission may make arrangements for such work relating to frequency planning to be carried out as they consider appropriate in connection with the discharge of their functions.
- (2) Any such work shall be directed towards securing that the frequencies assigned to the Commission under this Act are used as efficiently as is reasonably practicable.
- (3) The Commission may—
- (a) make arrangements for such research and development work to be carried out as they consider appropriate in connection with the discharge of their functions;
- (b) promote the carrying out by other persons of research and development work relating to television broadcasting.
- (4) The Commission shall consult the persons holding licences under this Part or Part II [<sup>F80</sup>or Part I of the Broadcasting Act 1996] as to the arrangements to be made by the Commission in pursuance of subsection (3)(a).
- (5) The Commission shall secure that, so far as is reasonably practicable—
- (a) any work carried out under arrangements made in pursuance of subsection (1) or (3) is carried out, under the supervision of the Commission, by persons who are neither members nor employees of the Commission; and
- (b) any work carried out under arrangements made in pursuance of subsection (3) (a) is to a substantial extent financed by persons other than the Commission.

### Textual Amendments

**F80** Words in S. 69(4) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 3** (with s. 43(1) (6)); S.I. 1996/2120, art. 4, **Sch. 1**

## 70 Representation by Commission of Government and other interests in connection with broadcasting matters.

The functions of the Commission shall include representing, at the request of the Secretary of State—

- (a) Her Majesty's Government in the United Kingdom, and
- (b) persons providing television programme services,

on bodies concerned with the regulation (whether nationally or internationally) of matters relating to television broadcasting.



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## 71 Interpretation of Part I.

(1) In this Part (unless the context otherwise requires)—

“the 1981 Act” means the <sup>M6</sup>Broadcasting Act 1981;

“additional service” and “additional services licence” have the meaning given by section 48(1) and section 49(10) respectively;

“the appropriate percentage”, in relation to any year, has the meaning given by section 19(10);

“cash bid”, in relation to a licence, has the meaning given by section 15(7);

“Channel 3” means the system of television broadcasting services established by the Commission under section 14, and “a Channel 3 licence” means a licence to provide one of the services comprised within that system;

“Channel 4” means the television broadcasting service referred to in section 24(1), and “on Channel 4” means in that service;

“Channel 5” means the television broadcasting service referred to in section 28(1), and “a Channel 5 licence” means a licence to provide that service;

“the Commission” means the Independent Television Commission established by section 1;

“the Corporation” means the Channel Four Television Corporation established by section 23;

<sup>F81</sup>  
 . . .

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“licensable programme service” has the meaning given by section 46(1);

“national Channel 3 service” has the meaning given by section 14(6), and “a national Channel 3 licence” means a licence to provide a national Channel 3 service;

<sup>F81</sup>  
 . . .

“regional Channel 3 service” has the meaning given by section 14(6), and “a regional Channel 3 licence” means a licence to provide a regional Channel 3 service;

[<sup>F82</sup>“restricted service” has the meaning given by section 42A;]

“S4C” means the television broadcasting service referred to in section 57(1), and “on S4C” means in that service;

[<sup>F83</sup>“satellite television service” has the meaning given by section 43(1);]

“spare capacity” shall be construed in accordance with section 48(2);

“television broadcasting service” has the meaning given by section 2(5);

“television programme service” has the meaning given by section 2(4).

(2) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.



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**Textual Amendments**

- F81** Definitions in s. 71(1) omitted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 10(a)**
- F82** Definition in s. 71 inserted (1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 17** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**
- F83** Definition in s. 71(1) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 10(b)**

**Marginal Citations**

- M6** 1981 c. 68.

**PART II**

LOCAL DELIVERY SERVICES

*Preliminary*

**72 Local delivery services.**

- (1) In this Part “local delivery service” means a service provided by any person which—
  - (a) consists in the use of a telecommunication system (whether run by that or any other person) for the purpose of the delivery of one or more of the services specified in subsection (2) for simultaneous reception in two or more dwelling-houses in the United Kingdom; and
  - (b) is of a class or description specified in an order made by the Secretary of State.
- (2) The services referred to in subsection (1)(a) are—
  - (a) any television broadcasting service (within the meaning of Part I of this Act) whether provided by the holder of a licence under that Part or by the BBC or the Welsh Authority;
  - [<sup>F84</sup>(aa) any restricted service (within the meaning of that Part);]
  - (b) any [<sup>F85</sup>satellite television service] (within the meaning of that Part);
  - (c) any licensable programme service (within the meaning of that Part);
  - [<sup>F86</sup>(cc) any digital programme service (as defined by section 1(4) of the Broadcasting Act 1996);]
  - <sup>F87</sup>(d) .....
  - (e) any licensable sound programme service (as defined by section 112(1)). [<sup>F88</sup>and
  - (f) any digital sound programme service (as defined by section 40(5) of the Broadcasting Act 1996).]
- (3) Without prejudice to the generality of subsection (1)(b) any class or description of service specified in an order under that provision may be framed by reference to—
  - (a) the nature of the telecommunication system by means of which the service is provided, or
  - (b) the nature of the programmes, or any of the programmes, delivered by the service.
- (4) Any order under subsection (1)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(5) In this Part—

“the Commission” means the Independent Television Commission;

“licence” means (unless the context otherwise requires) a licence under this Part;

“local delivery licence” means a licence to provide a local delivery service.

#### Textual Amendments

- F84** S. 72(2)(aa) inserted (1.4.1997) by 1996 c. 55, ss. 148(1), 149(2), **Sch. 10 Pt. II para. 18** (with s. 143(1)(6)); S.I. 1997/1005, **art. 4**
- F85** Words in S. 72(2)(b) substituted (11.7.1997) by S.I. 1997/1682, **reg. 11**
- F86** S. 72(2)(cc) inserted (1.4.1997) by 1996 c. 55, ss. 148(1), 149(2), **Sch. 10 Pt. I para. 4** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**
- F87** S. 72(2)(d) and the word “and” repealed (1.10.1996) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, **art. 4, Sch. 1**
- F88** Word “and” and S. 72(2)(f) inserted (1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 4** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**

### *Licensing of local delivery services*

#### 73 Licensing of local delivery services.

- (1) The Commission may grant such licences to provide local delivery services as they may determine.
- (2) Local delivery licences shall authorise the provision of local delivery services for such areas in the United Kingdom as the Commission may determine; and, where such licences authorise the provision of such services to any extent by wireless telegraphy, they shall be so provided on frequencies assigned to those services by the Commission.
- (3) Subject to subsection (4), sections 3, 4 and 5 shall apply to local delivery licences as they apply to licences granted by the Commission under Part I of this Act.
- (4) In the application of those sections to local delivery licences—
  - (a) section 3(1) shall have effect as if the words “ or Part II ” were added at the end;
  - (b) any reference in any other provision of those sections to Part I of this Act shall be construed as including a reference to this Part of this Act; and
  - (c) section 3(5) shall have effect as if the first reference to section 19(1) included a reference to section 77(1).
- (5) A local delivery licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Commission may impose, to authorise any person to whom this subsection applies to undertake to any extent the provision of the licensed service on behalf of the licence holder.
- (6) Subsection (5) applies to any person who is not a disqualified person in relation to a local delivery licence by virtue of Part II of Schedule 2 to this Act.
- (7) Any conditions included in a local delivery licence shall apply in relation to the provision of the licensed service to any extent by a person authorised as mentioned in subsection (5) as they apply in relation to the provision of the service by the licence

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holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.

#### 74 Applications for local delivery licences.

- (1) Where the Commission propose to grant a licence to provide a local delivery service they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the area in the United Kingdom for which the service is to be provided, and
    - (ii) any frequencies that would be available for it to be provided by wireless telegraphy should it be desired so to provide it;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 77(1)(c) if he were granted the licence.
- (2) The Commission may, if they think fit, specify under subsection (1)(d)(ii)—
  - (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
  - (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
    - (i) the parts of the area specified under subsection (1)(b)(i) which would be covered by that service,
    - (ii) the timetable in accordance with which that coverage would be achieved,
    - (iii) the technical means by which it would be achieved, and
    - (iv) the extent (if any) to which he proposes that the provision of the service should be undertaken by some other person in accordance with section 73(5);
  - (c) the applicant's cash bid in respect of the licence;
  - (d) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force; and
  - (e) such other information as the Commission may reasonably require for the purpose of considering the application.

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- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under subsection (3)(b), (d) or (e).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
  - (c) such other information connected with his application as the Commission consider appropriate.
- (7) In this Part—
  - (a) “cash bid”, in relation to a local delivery licence, means an offer to pay to the Commission a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period); and
  - (b) “the appropriate percentage”, in relation to any year, has the meaning given by section 19(10).

## **75 Procedure to be followed by Commission in connection with consideration of applications for licences.**

- (1) Where a person has made an application for a local delivery licence in accordance with section 74, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 76 unless it appears to them—
  - (a) that any telecommunication system proposed to be used by the applicant in the provision of his proposed service would be acceptable to the relevant licensing authorities and would be capable of being established in accordance with the timetable indicated by him in the technical plan submitted under section 74(3)(b); and
  - (b) that he would be able to maintain that service throughout the period for which the licence would be in force;
 and any reference to an applicant in section 76 (except in subsection (12)(b)) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Before forming any view as to whether the requirements of subsection (1)(a) are satisfied in the case of an applicant the Commission shall consult the relevant licensing authorities; and in that provision and this subsection “the relevant licensing authorities” means—
  - (a) where any telecommunication system proposed to be used as mentioned in that provision would be required to be licensed under the <sup>M7</sup>Wireless Telegraphy Act 1949, the Secretary of State; and

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- (b) where any telecommunication system proposed to be so used would be required to be licensed under Part II of the <sup>M8</sup>Telecommunications Act 1984, the Secretary of State and the Director General of Telecommunications.

**Marginal Citations**

**M7** 1949 c. 54.

**M8** 1984 c. 12.

**76 Award of licence to person submitting highest cash bid.**

- (1) Subject to the following provisions of this section, the Commission shall, after considering all the cash bids submitted by the applicants for a local delivery licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Commission shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) The Commission may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.
- (4) Without prejudice to the generality of subsection (3), the Commission may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to them that the coverage proposed to be achieved by such an applicant, as indicated in the technical plan submitted by him under section 74(3)(b), is substantially greater than that proposed to be achieved—
- (a) by the applicant who submitted the highest bid, or
- (b) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids,
- as indicated in the technical plan submitted by him under that provision; and where it appears to the Commission, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (5) If it appears to the Commission, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
- (a) they shall refer his application to the Secretary of State, together with—
- (i) a copy of all documents submitted to them by the applicant, and
- (ii) a summary of their deliberations on the application; and
- (b) they shall not award the licence to him unless the Secretary of State has given his approval.

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- (6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
- (a) paying any amounts payable by him by virtue of section 77(1), or
  - (b) otherwise financing the provision of his proposed service.
- (8) In a case where any requirement such as is mentioned in section 5(1)(b) (as it applies by virtue of section 73(3)) operates to preclude the Commission from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases; and any such rules may provide for the awarding of licences by reference to orders of preference notified to the Commission by applicants at the time of making their applications.
- (9) Any such rules shall be published by the Commission in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.
- (10) Where the Commission are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (16)) have effect as if that person had not made an application for the licence.
- (11) Where the Commission have awarded a local delivery licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (12) The matters referred to in subsection (11)(a) are—
- (a) the name of the applicant to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to the Commission that the requirements of section 75(1)(a) were satisfied;
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Commission’s reasons for the licence having been so awarded; and
  - (d) such other information as the Commission consider appropriate.
- (13) If at any time after a local delivery licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Commission that he does not intend to provide the service in question, or
  - (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,

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then, subject to subsections (14) and (16)—

- (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) this section shall have effect as if he had not made an application for the licence.
- (14) Subsection (13) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (15) In a case where a local delivery licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if—
- (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (16) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if the Commission decide that it would be desirable to publish a fresh notice under section 74 in respect of the grant of the licence; and similarly this section shall not have effect as mentioned in subsection (13) if the Commission decide that it would be desirable to publish such a notice in respect of the grant of a further licence to provide the local delivery service in question.

[<sup>F89</sup>76A **Award of local delivery licence subject to conditions.**

- (1) The Commission may, when awarding a local delivery licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
  - (a) any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and
  - (b) any information provided to them under section 74(3)(d) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where the Commission determine that any condition imposed by them in relation to a local delivery licence in pursuance of subsection (1) has not been satisfied, section 76 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 76 shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under section 74(1) in respect of the grant of the licence.]

**Textual Amendments**

**F89** S. 76A inserted (1.10.1996) by 1996 c. 55, s. 86(3) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

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## **77 Additional payments to be made in respect of local delivery licences.**

- (1) A local delivery licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b), as applied by section 73(3))—
  - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 74(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all payments which are received or to be received by him, or by any person connected with him, and are derived from the delivery in that period, in accordance with his licence, of services falling within section 72(2) (whether their delivery is undertaken by him or by any person authorised by him as mentioned in section 73(5)).
- (3) A local delivery licence may include conditions—
  - (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
  - (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
  - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
 any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (6) Part I of Schedule 7 has effect for the purposes of this section.

## **78 Duration and renewal of local delivery licences.**

- (1) A local delivery licence shall, subject to the provisions of this Part, continue in force for a period of fifteen years, and may (subject to the following provisions of this section) be renewed on one or more occasions for a period of fifteen years beginning with the date of renewal.



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- (2) An application for the renewal of a local delivery licence under subsection (1) may be made by the licence holder not earlier than five years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a local delivery licence has been duly made to the Commission, they may only (subject to subsection (5)) refuse the application if—
  - (a) they propose to grant a fresh local delivery licence for the provision of a service which would be provided for a different area from that for which the applicant's service is provided under his licence; or
  - (b) in the case of an applicant who has not achieved the coverage set out in the technical plan submitted under section 74(3)(b), either—
    - (i) they are not satisfied that he would, if his licence were renewed, be able to achieve that coverage in accordance with the timetable indicated in the plan, or
    - (ii) the period within which it was to be achieved has expired.
- (5) Section 76(5) to (7) shall apply in relation to an applicant for the renewal of a local delivery licence as those provisions apply in relation to such an applicant as is mentioned in section 76(5), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any such application the Commission—
  - (a) shall determine an amount which is to be payable to the Commission by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (b) may specify a different percentage from that specified under section 74(1)(d)
    - (i) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 77(1)(c) during the period for which the licence is to be renewed;and the Commission may specify under paragraph (b) either of the things mentioned in section 74(2).
- (7) The amount determined by the Commission under subsection (6)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 77(1)(a) if they were granting a fresh licence to provide the local delivery service in question.
- (8) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
  - (a) the amount determined by them under subsection (6)(a), and
  - (b) any percentage specified by them under subsection (6)(b),and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (9) Where a local delivery licence is renewed under this section—

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- (a) any conditions included in it in pursuance of section 77 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Commission under subsection (6)(a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (6)(b) above; and
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a local delivery licence is originally in force.
- (10) In this section “the relevant date”, in relation to a local delivery licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 74 if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the local delivery service formerly provided under that licence.

**[<sup>F90</sup>78A Inclusion of certain services in local delivery service provided by digital means.**

- (1) Where the Commission are satisfied, in the case of a local delivery service by means of which one or more of the services specified in section 72(2) is delivered in digital form, that it would be appropriate, having regard to the extent of the use and proposed use of digital technology in the provision of the service, for the service to be treated as a digital local delivery service for the purposes of this section, they shall serve a notice to that effect on the holder of the licence to provide the service.
- (2) The Commission shall do all that they can to secure that, subject to subsection (3) and to any exceptions for which the Secretary of State, after consultation with the Commission, the BBC and the Welsh Authority, may by order provide, every digital local delivery service provided by any person in any area includes, by the reception and immediate re-transmission of the broadcasts—
  - (a) the programmes included in each relevant service, and
  - (b) if the area for which the local delivery service is provided falls wholly or partly in Wales, the programmes included in the appropriate Welsh service.
- (3) The Commission may exempt any digital local delivery service from the requirement to include any service (“the broadcast service”) if it appears to the Commission that, at the place where the holder of the licence to provide the local delivery service receives or would receive the broadcast service, the broadcast service is not capable of being received at a level satisfying such technical standards as the Commission may from time to time determine.
- (4) Where a relevant service provided for reception in an area for which a digital local delivery service is provided consists in the broadcasting for simultaneous reception of programmes contained in two or more programme schedules, then, so far as relating to that relevant service, the duty in subsection (2) shall be subject to the limitation in whichever of subsections (5) and (6) is appropriate.
- (5) Where the programmes contained in one of the programme schedules are broadcast for reception in a greater part of the area than the programmes contained in the other schedule or any of the other schedules, the duty in subsection (2) so far as so relating shall extend only to the programmes contained in the first-mentioned schedule.

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- (6) Where subsection (5) does not apply, the duty in subsection (2) so far as so relating shall extend only to the programmes contained in such one of the programme schedules as the relevant broadcasting body may determine.
- (7) For the purposes of this section Channel 3 shall be taken to be a single service consisting in the broadcasting for simultaneous reception of programmes contained in several programme schedules.
- (8) Each broadcaster shall provide any person providing a digital local delivery service with such assistance as he may reasonably require in relation to the technical arrangements for the re-transmission in pursuance of this section of the broadcasts of that broadcaster.
- (9) In this section—  
“the appropriate Welsh service” means the service referred to in section 57(1A)(a) or, if no such service is being broadcast, S4C;  
“broadcaster” means the Welsh Authority or any person providing a relevant service;  
“digital local delivery service” means any local delivery service in respect of which the Commission have given a notice under subsection (1);  
“the relevant broadcasting body” means—  
(a) in relation to any service provided by the BBC, the BBC, and  
(b) in relation to any service licensed by the Commission, the Commission;  
“relevant service” means any of the following services—  
(a) Channel 3, Channel 4 and Channel 5,  
(b) the teletext service referred to in section 49(2), and  
(c) the television broadcasting services and teletext service provided by the BBC.
- (10) Expressions used in subsections (7) and (9) and in Part I of this Act have the same meaning in those provisions as in that Part.
- (11) An order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

**F90** S. 78A inserted (1.10.1996) by 1996 c. 55, s. 91(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

*Regulation of delivery of certain programmes*

**79 Regulation of delivery of programmes provided by licence holder and foreign satellite programmes.**

- (1) Without prejudice to the generality of section 3(2) or (as the case may be) section 86(2), a licence to provide such a service as is mentioned in section 72(2)(c) or (e) may, where it is granted to the holder of a local delivery licence, authorise the provision by that person of programmes for delivery on all or any of the channels on which his local delivery service is provided.

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- (2) Where any licensed local delivery service consists in or includes relaying (complete and unchanged) any foreign satellite programmes, the following provisions, namely—
- (a) section 6(1) so far as relating to the requirements specified in paragraphs (a), (d) and (e) of that provision, and
  - (b) section 7,
- shall have effect as if the delivery of those programmes constituted the provision of a service licensed under Part I of this Act.
- (3) Accordingly, any reference in those provisions to programmes included in a licensed service shall, where those provisions have effect as mentioned in subsection (2) above, be construed as a reference to any such programmes as are mentioned in that subsection.
- (4) The holder of a local delivery licence shall be taken to be authorised by his licence to include in the licensed service advertisements which are inserted by him and are not included in any service falling within section 72(2); but, if any such advertisements are so included by him, sections 8 and 9 shall have effect as if the delivery of those advertisements constituted the provision of a service licensed under Part I of this Act and he were the holder of a licence in force under that Part.
- [<sup>F91</sup>(5) In subsection (2) “foreign satellite programme” means—
- (a) a television programme transmitted by satellite otherwise than as part of—
    - (i) a satellite television service (within the meaning of Part I),
    - (ii) a service provided by a person established in an EEA State other than the United Kingdom, or
    - (iii) a service not falling within sub-paragraph (i) or (ii) and transmitted from within any country or territory specified in an order made by the Secretary of State for the purposes of this sub-paragraph, or
  - (b) a sound programme transmitted by satellite from a place outside the United Kingdom, other than a programme so transmitted from within any country specified in an order made by the Secretary of State for the purposes of this paragraph.]

#### Textual Amendments

**F91** S. 79(5) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, Sch. para. 12

## 80 Directions requiring licence holder to cease relaying foreign television programmes.

- (1) If the Commission are satisfied that it is appropriate to do so in pursuance of any international agreement to which the United Kingdom is for the time being a party, they may give to the holder of a local delivery licence a direction requiring him not to relay television programmes which—
- (a) are transmitted from a place outside the United Kingdom, and
  - (b) are included in any service specified or described in the direction.
- (2) Any direction under this section may describe a service for the purposes of subsection (1)(b) by reference to such matters as the Commission think fit.

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- (3) Any such direction shall, according to its terms, have effect either during a specified period or for an indefinite period.

### *Enforcement of licences*

## **81 Enforcement of local delivery licences.**

- (1) Subject to subsections (2) and (4), sections 41 and 42 shall apply in relation to a local delivery licence as they apply in relation to a licence to provide a Channel 3 service.
- (2) In its application in relation to a local delivery licence—
- (a) section 41 shall have effect—
    - (i) with the substitution in subsection (2) of “section 77(2)” for “section 19(2) to (6)”, and
    - (ii) with the omission of subsection (5); and
  - (b) section 42 shall have effect with the omission of subsection (7);
- and the reference to Part I of this Act in subsection (1) of each of those sections shall be construed as including a reference to this Part of this Act.

[<sup>F92</sup>(2A) Where the Commission—

- (a) serve a notice on a BBC company under any provision of section 41 or 42 (as applied by subsection (1)), or
- (b) receive any representations from a BBC company under section 40(2), 41(3) or 42(8) (as so applied),

the Commission shall send a copy of the notice or representations to the Secretary of State.]

- (3) A local delivery licence shall include a condition requiring the licensed service to be established by the licence holder in accordance with the timetable indicated in the technical plan submitted under section 74(3)(b).
- (4) The Commission shall not revoke any local delivery licence under section 42 (as applied by subsection (1) above) by reason of the failure of the licence holder to comply with any such condition as is mentioned in subsection (3) above unless they are satisfied, after consulting the Secretary of State and the Director General of Telecommunications, that it would have been reasonably practicable for the licence holder to comply with it.

### **Textual Amendments**

**F92** S. 81(2A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(f), **Sch. 8 para. 4** (with s. 43(1)(6))

### *Prohibition on providing unlicensed local delivery services*

## **82 Prohibition on providing local delivery services without a licence.**

- (1) Any person who provides any local delivery service without being authorised to do so by or under a licence under this Part shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (3) No proceedings in respect of an offence under this section shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) Without prejudice to subsection (2) above, compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.

### PART III

#### INDEPENDENT RADIO SERVICES

#### CHAPTER I

#### REGULATION BY AUTHORITY OF INDEPENDENT RADIO SERVICES GENERALLY

#### *Establishment of Radio Authority*

#### **83 The Radio Authority.**

- (1) There shall be an authority to be called the Radio Authority (in this Part referred to as “the Authority”).
- (2) The Authority shall consist of—
  - (a) a chairman and a deputy chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than four nor more than ten, as he may from time to time determine.
- (3) Schedule 8 to this Act shall have effect with respect to the Authority.

#### **Modifications etc. (not altering text)**

**C43** [S. 83\(2\)\(b\)](#): functions to be exercised (1.7.1999) subject to agreement of or consultation with the Scottish Ministers by virtue of [S.I. 1999/1750](#), arts. 1, 4, [Sch. 3](#); [S.I. 1998/3178](#)

#### *Function of Authority*

#### **84 Regulation by Authority of independent radio services.**

- (1) It shall be the function of the Authority to regulate, in accordance with this Part [<sup>F93</sup>and Part II of the Broadcasting Act 1996], the provision of the following services, namely—
  - (a) sound broadcasting services to which this section applies and which are provided from places in the United Kingdom;

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- <sup>F94</sup>(b) .....
  - (c) additional services (as defined by section 114(1)) which are provided from places in the United Kingdom;
  - [<sup>F95</sup>(d) radio multiplex services (as defined by section 40(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC;
  - (e) digital sound programme services (as defined by section 40(5) of that Act) which are provided from places in the United Kingdom by persons other than the BBC; and
  - (f) digital additional services (as defined by section 63(1) of that Act) which are provided from places in the United Kingdom by persons other than the BBC;]
- and in this Part “independent radio service” means a service falling within paragraph (a), (b) or (c) above.

(2) This section applies to—

- (a) any sound broadcasting service which is provided, on a frequency or frequencies assigned to the Authority under subsection (4)—
  - (i) for any such minimum area of the United Kingdom as the Authority may determine in accordance with section 98(2) (a “national service”), or
  - (ii) for a particular area or locality in the United Kingdom (a “local service”), or
  - (iii) for a particular establishment or other defined location, or a particular event, in the United Kingdom (a “restricted service”); and
- (b) any sound broadcasting service (other than one provided by the BBC) which consists—
  - (i) in the transmission of sound programmes by satellite from a place in the United Kingdom for general reception there, or
  - (ii) in the transmission of such programmes by satellite from a place outside the United Kingdom for general reception there, if and to the extent that the programmes included in the service consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him),

and any such service is referred to in this Part as a “satellite service”.

(3) For the purposes of this Part satellite services shall [<sup>F96</sup>subject to subsection (3A)]be regarded as provided by the following persons—

- (a) a service falling within subsection (2)(b)(i)—
  - (i) shall, if and to the extent that the programmes included in it consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him), be regarded as provided by that person (whether the programmes are transmitted by him or not), but
  - (ii) shall otherwise be regarded as provided by the person by whom the programmes are transmitted; and
- (b) a service falling within subsection (2)(b)(ii) shall be regarded as provided by the person by whom the programme material in question is provided as mentioned in that provision.

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- [<sup>F97</sup>(3A) For the purposes of this Part, any satellite service which is composed by, and transmitted for, a BBC company, a Channel 4 company or an S4C company—
- (a) shall be regarded as provided by that company and not by the relevant broadcasting body (even if the relevant broadcasting body is in a position to determine what is to be included in the service), and
  - (b) shall be regarded as provided from a place in the United Kingdom.
- (3B) In subsection (3A) “relevant broadcasting body” means—
- (a) in relation to a BBC company, the BBC,
  - (b) in relation to a Channel 4 company, the Channel Four Television Corporation, and
  - (c) in relation to an S4C company, the Welsh Authority.]

(4) For the purposes of this Part the Secretary of State may by notice assign to the Authority such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more independent radio services.

(5) Any frequency assigned by the Secretary of State under subsection (4) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.

(6) The Secretary of State may by notice revoke the assignment under subsection (4) of any frequency specified in the notice, and may do so whether or not that frequency is for the time being one on which an independent radio service is being provided.

#### Textual Amendments

- F93** Words in S. 84(1) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 5(a)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F94** S. 84(1)(b) and the word “and” repealed (1.10.1996) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F95** S. 84(1)(d)(e)(f) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 5(b)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F96** Words in S. 84(3) substituted (24.7.1996 for certain purpose otherwise 1.10.1996) by 1996 c. 55, ss.148(1), 149(1), **Sch. 10 Pt. II para. 19(2)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F97** S. 84(3A)(3B) inserted (24.7.1996 for certain purposes otherwise 1.10.1996) by 1996 c. 55, ss. 148(1), 149(1), **Sch. 10 Pt. II para. 19(3)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

## 85 Licensing functions of Authority.

- (1) Subject to subsection (2), the Authority may, in accordance with the following provisions of this Part, grant such licences to provide independent radio services as they may determine.
- (2) The Authority shall do all that they can to secure the provision within the United Kingdom of—
  - (a) a diversity of national services each catering for tastes and interests different from those catered for by the others and of which—
    - (i) one is a service the greater part of which consists in the broadcasting of spoken material, and



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- (ii) another is a service which consists, wholly or mainly, in the broadcasting of music which, in the opinion of the Authority, is not pop music; and
  - (b) a range and diversity of local services.
- (3) It shall be the duty of the Authority to discharge their functions as respects the licensing of independent radio services [<sup>F98</sup>and services falling within section 84(1)(d), (e) and (f)] in the manner which they consider is best calculated—
- (a) to facilitate the provision of licensed services [<sup>F99</sup>(including digital sound programme services licensed under Part II of the Broadcasting Act 1996)] which (taken as a whole) are of high quality and offer a wide range of programmes calculated to appeal to a variety of tastes and interests; and
  - (b) to ensure fair and effective competition in the provision of such services and services connected with them.
- (4) Subsection (3)(b) shall not be construed as affecting the discharge by the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission of any of his or their functions in connection with competition.
- (5) The Secretary of State may by order make such amendments of subsection (2)(a) as he considers appropriate—
- (a) for including in that provision a requirement that one of the national services there referred to should be a service of a particular description, or
  - (b) for removing such a requirement from that provision;
- and (without prejudice to the generality of section 200(2)(b)) any such order may make such consequential amendments of section 98(1)(b)(iii) as the Secretary of State considers appropriate.
- (6) In subsection (2)(a)(ii) “pop music” includes rock music and other kinds of modern popular music which are characterised by a strong rhythmic element and a reliance on electronic amplification for their performance (whether or not, in the case of any particular piece of rock or other such music, the music in question enjoys a current popularity as measured by the number of recordings sold).
- (7) An order shall not be made under subsection (5) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F98** Words in S. 85(3) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 6(a)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

**F99** Words in S. 85(3)(a) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 6(b)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

#### *General provisions about licences*

### 86 Licences under Part III.

- (1) A licence shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as may be specified in the licence.

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- (2) A licence may be granted by the Authority for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified; and (without prejudice to the generality of the preceding provision) a licence may be so granted for the provision of a service which to any extent consists in the simultaneous broadcasting of different programmes on different frequencies.
- (3) The following licences, namely—
- (a) any licence to provide a national, local or satellite service,
  - (b) any licence to provide a licensable sound programme service, and
  - (c) any licence to provide additional services,
- shall not continue in force for a period of more than eight years.
- (4) The Authority—
- (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and
  - (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;
- and nothing in this Part shall be construed as affecting the operation of this subsection or of section 88(1) or (2)(b) or (c) or 89(1).
- [<sup>F100</sup>(4A) Where the Authority are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.]
- (5) The Authority may vary a licence by a notice served on the licence holder if—
- (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Authority about the variation.
- (6) Paragraph (a) of subsection (5) does not affect the operation of section 110(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 102(1) or section 118(1).
- (7) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Authority.
- (8) Without prejudice to the generality of subsection (7), the Authority shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.
- (9) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the <sup>M9</sup>Wireless Telegraphy Act 1949 or section 7 of the <sup>M10</sup>Telecommunications Act 1984 in connection with the provision of that service.

#### Textual Amendments

**F100** S. 86(4A) inserted (24.7.1996) by 1996 c. 55, s. 136, 149(1)(f), **Sch. 8 para. 5** (with s. 43(1)(6))

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#### Marginal Citations

**M9** 1949 c. 54.

**M10** 1984 c. 12.

### 87 General licence conditions.

- (1) A licence may include—
- (a) such conditions as appear to the Authority to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act;
  - (b) conditions enabling the Authority to supervise and enforce technical standards in connection with the provision of the licensed service;
  - (c) conditions requiring the payment by the licence holder to the Authority (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
  - (d) conditions requiring the licence holder to furnish the Authority, in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under this Act;
  - (e) conditions requiring the licence holder, if found by the Authority to be in breach of any condition of his licence, to reimburse to the Authority, in such circumstances as are specified in any conditions, any costs reasonably incurred by them in connection with the breach of that condition;
  - (f) conditions providing for such incidental and supplemental matters as appear to the Authority to be appropriate.
- (2) A licence may in particular include—
- (a) conditions requiring the licence holder—
    - (i) to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified, or
    - (ii) (except to the extent that the Authority consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified; and
  - (b) conditions requiring the licence holder to permit—
    - (i) any employee of, or person authorised by, the Authority, or
    - (ii) any officer of, or person authorised by, the Secretary of State,to enter any premises which are used in connection with the broadcasting of the licensed service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.
- (3) The fees required to be paid to the Authority by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by the Authority; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Authority to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Authority regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 8.

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- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Authority shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
  - (a) is required by virtue of any condition imposed under this Part to provide the Authority with any information, and
  - (b) in purported compliance with that condition provides them with any information which is false in a material particular,
 he shall be taken for the purposes of sections 110 and 111 to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

## **88 Restrictions on the holding of licences.**

- (1) The Authority shall do all that they can to secure—
  - (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - (b) that any requirements imposed by or under Parts III to V of that Schedule are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Authority may accordingly—
  - (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
    - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
  - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
  - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
  - (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
    - (i) shareholdings in the body, or
    - (ii) the directors of the body,
 where such proposals are known to the body;
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.

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[<sup>F101</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Authority shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]

(3) Where the Authority—

- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
- (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,

any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.

(4) Those provisions shall not so have effect if the Authority decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.

(5) Every licence shall include such conditions as the Authority consider necessary or expedient to ensure that where—

- (a) the holder of the licence is a body, and
- (b) a relevant change takes place after the grant of the licence,

the Authority may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.

[<sup>F102</sup>(6) The Commission shall not serve any such notice on the licence holder unless—

- (a) the Commission have notified him of the matters complained of and given him a reasonable opportunity of making representations to them about those matters, and
- (b) in a case where the relevant change is one falling within subsection (6A)—
  - (i) they have also given him an opportunity of complying with Parts III and IV of Schedule 2 within a period specified in the notification, and
  - (ii) the period specified in the notification has elapsed.

(6A) A relevant change falls within this subsection if it consists only in one or more of the following—

- (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2;
- (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule);
- (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).

(6B) Where a licence has been granted in a case where the Commission could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Commission would have made such a determination in the new circumstances of the case.]

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- [<sup>F103</sup>(6C) The Authority shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.
- (6D) Where the Authority receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.]
- (7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—
- (a) any change affecting the nature or characteristics of the body, or
  - (b) any change in the persons having control over or interests in the body, [<sup>F104</sup>or
  - (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,]
- being [<sup>F105</sup>(in any case)] a change which is such that, if it fell to the Authority to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

#### Textual Amendments

- F101** S. 88(2A) inserted (24.7.1996) by 1996 c. 55, s. 136, **Sch. 8 para. 6(2)** (with s. 43(1)(6))
- F102** S. 88: subsections (6)(6A)(6B) substituted for subsection (6) (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 13(2)**; S.I. 1996/2120, art. 5, **Sch. 2**
- F103** S. 88(6C)(6D) inserted (24.7.1996) by 1996 c. 55, s. 136, **Sch. 8 para. 6(3)** (with s. 43(1)(6))
- F104** S. 88(7)(c) and the word “or” immediately preceding it inserted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 13(3)(a)** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**
- F105** Words in s. 88(7) substituted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 13(3)(b)** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

#### Modifications etc. (not altering text)

- C44** S. 88(1) modified (1.11.1996) by 1996 c. 55, s. 143(3)(4)(6)(b) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**
- C45** S. 88(1)(a) amended (1.11.1996) by 1996 c. 55, s. 145(7) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

## 89 Disqualification for holding licence on grounds of conviction for transmitting offence.

- (1) Subject to subsection (2), a person shall be disqualified for holding a licence under this Part if within the last five years he has been convicted of—
- (a) an offence under section 1 of the <sup>M11</sup>Wireless Telegraphy Act 1949 (licensing of wireless telegraphy) which involved the making of any transmission by wireless telegraphy otherwise than under and in accordance with a licence under that section;
  - (b) an offence under the <sup>M12</sup>Marine, &c., Broadcasting (Offences) Act 1967; or
  - (c) an offence under section 97 below.
- (2) Subsection (1)(a) and (b) do not apply to any offence committed before 1st January 1989.
- (3) Every licence granted under this Part shall include conditions requiring the holder of the licence to do all that he can to ensure that no person who is disqualified for holding

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a licence by virtue of subsection (1) is concerned in the operation of any station for wireless telegraphy used in the provision of the licensed service.

#### Marginal Citations

- M11 1949 c. 54.  
M12 1967 c. 41.

### *General provisions about licensed services*

## 90 General requirements as to licensed services.

- (1) The Authority shall do all that they can to secure that every licensed service complies with the following requirements, namely—
  - (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
  - (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality; and
  - (c) that its programmes do not include any technique which exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons listening to the programmes without their being aware, or fully aware, of what has occurred.
- (2) The Authority shall, in the case of every licensed service which is a national, local, satellite or licensable sound programme service, do all that they can to secure that the service complies with the following additional requirements, namely—
  - (a) the appropriate requirement specified in subsection (3);
  - (b) that (without prejudice to the generality of subsection (1)(b) or (3)(a)) there are excluded from its programmes all expressions of the views and opinions of the person providing the service on matters (other than sound broadcasting) which are of political or industrial controversy or relate to current public policy; and
  - (c) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those listening to the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (3) The appropriate requirement referred to in subsection (2)(a) is—
  - (a) where the licensed service is a national service, that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
  - (b) where the licensed service is a local, satellite or licensable sound programme service, that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on such matters.
- (4) In applying subsection (3)(a) to a national service a series of programmes may be considered as a whole; and in applying subsection (3)(b) to a local, satellite or



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licensable sound programme service the programmes included in that service shall be taken as a whole.

- (5) The Authority shall—
- (a) draw up, and from time to time review, a code giving guidance—
    - (i) as to the rules to be observed in determining what constitutes a series of programmes for the purposes of subsection (4),
    - (ii) as to the rules to be observed in other respects in connection with the application of subsection (3)(a) in relation to a national service, and
    - (iii) as to the rules to be observed in connection with the application of subsection (3)(b) in relation to a local, satellite or licensable sound programme service; and
  - (b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
- and the Authority may make different provision in the code for different cases or circumstances.
- (6) The Authority shall publish the code drawn up under subsection (5), and every revision of it, in such manner as they consider appropriate.
- (7) Nothing in this section or in sections 91 to 96 has effect in relation to any licensed service which is an additional service.

**Modifications etc. (not altering text)**

**C46** S. 90 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 60(7)(8) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**91 General code for programmes.**

- (1) The Authority shall draw up, and from time to time review, a code giving guidance—
- (a) as to the rules to be observed with respect to the inclusion in programmes of sounds suggestive of violence, particularly in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes;
  - (b) as to the rules to be observed with respect to the inclusion in programmes of appeals for donations; and
  - (c) as to such other matters concerning standards and practice for programmes as the Authority may consider suitable for inclusion in the code;
- and the Authority shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.
- (2) In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Authority shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes.
- (3) Before drawing up or revising the code under this section the Authority shall (to such extent as they consider it reasonably practicable to do so) consult every person who is the holder of a licence under this Part.



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- (4) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

**Modifications etc. (not altering text)**

- C47** S. 91 applied (27.7.2000) by S.I. 2000/1864, art. 2, **Sch. para. 5**  
**C48** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9)(10) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

**92 General provisions as to advertisements.**

- (1) The Authority shall do all that they can to secure that the rules specified in subsection (2) are complied with in relation to licensed services.
- (2) Those rules are as follows—
- (a) a licensed service must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or
    - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in a licensed service there must be no unreasonable discrimination either against or in favour of any particular advertiser; and
  - (c) a licensed service must not, without the previous approval of the Authority, include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the licence holder is prohibited from advertising by virtue of any provision of section 93.
- (3) Nothing in subsection (2) shall be construed as prohibiting the inclusion in a licensed service of any party political broadcast which complies with the rules (so far as applicable) made by the Authority for the purposes of section 107.
- (4) After consultation with the Authority the Secretary of State may make regulations amending, repealing, or adding to the rules specified in subsection (2); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (5) The Authority shall not act as an advertising agent.

**Modifications etc. (not altering text)**

- C49** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9)(10) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

**93 Control of advertisements.**

- (1) It shall be the duty of the Authority—

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- (a) after the appropriate consultation, to draw up, and from time to time review, a code—
    - (i) governing standards and practice in advertising and in the sponsoring of programmes, and
    - (ii) prescribing the advertisements and methods of advertising or sponsorship to be prohibited, or to be prohibited in particular circumstances; and
  - (b) to do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
- and the Authority may make different provision in the code for different kinds of licensed services.
- (2) In subsection (1) “the appropriate consultation” means consultation with—
- (a) the Independent Television Commission,
  - (b) such bodies or persons appearing to the Authority to represent each of the following, namely—
    - (i) listeners,
    - (ii) advertisers, and
    - (iii) professional organisations qualified to give advice in relation to the advertising of particular products,
 as the Authority think fit, and
  - (c) such other bodies or persons who are concerned with standards of conduct in advertising as the Authority think fit,
- and (to the extent that the Authority consider such consultation to be reasonably practicable) consultation with every person who is the holder of a licence under this Part.
- (3) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.
- (4) The Authority shall—
- (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be included in licensed services and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of such services; and
  - (b) carry out any directions which he may give to them in respect of such matters.
- (5) The Authority may, in the discharge of a general responsibility with respect to advertisements and methods of advertising and sponsorship, impose requirements as to advertisements or methods of advertising or sponsorship which go beyond the requirements imposed by the code.
- (6) The methods of control exercisable by the Authority for the purpose of securing that the provisions of the code are complied with, and for the purpose of securing compliance with requirements imposed under subsection (5) which go beyond the requirements of the code, shall include a power to give directions to the holder of a licence—
- (a) with respect to the classes and descriptions of advertisements and methods of advertising or sponsorship to be excluded, or to be excluded in particular circumstances; or

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- (b) with respect to the exclusion of a particular advertisement, or its exclusion in particular circumstances.
- (7) Directions under this section may be, to any degree, either general or specific and qualified or unqualified.
- (8) The Authority shall, in drawing up or revising the code, take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

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**Modifications etc. (not altering text)**

**C50** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

#### 94 Government control over licensed services.

- (1) If it appears to him to be necessary or expedient to do so in connection with his functions as such, the Secretary of State or any other Minister of the Crown may at any time by notice require the Authority to direct the holders of any licences specified in the notice to publish in their licensed services, at such times as may be specified in the notice, such announcement as is so specified; and it shall be the duty of the Authority to comply with the notice.
- (2) Where the holder of a licence publishes any announcement in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (3) The Secretary of State may at any time by notice require the Authority to direct the holders of any licences specified in the notice to refrain from including in the programmes included in their licensed services any matter or classes of matter specified in the notice; and it shall be the duty of the Authority to comply with the notice.
- (4) Where the Authority—
  - (a) have given the holder of any licence a direction in accordance with a notice under subsection (3), or
  - (b) in consequence of the revocation by the Secretary of State of such a notice, have revoked such a direction,or where such a notice has expired, the holder of the licence in question may publish in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (5) The powers conferred by this section are in addition to any power specifically conferred on the Secretary of State by any other provision of this Act.
- (6) In relation to any licensed service provided from a place in Northern Ireland, the reference in subsection (1) to a Minister of the Crown includes a reference to the head of any Northern Ireland department.

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**Modifications etc. (not altering text)**

**C51** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**C52** S. 94 amended (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

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## 95 Monitoring by Authority of programmes included in licensed services.

- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Authority may make and use recordings of those programmes or any part of them.
- (2) A licence shall include conditions requiring the licence holder—
  - (a) to retain, for a period not exceeding 42 days, a recording of every programme included in the licensed service;
  - (b) at the request of the Authority, to produce to them any such recording for examination or reproduction;
  - (c) at the request of the Authority, to produce to them any script or transcript of a programme included in the licensed service which he is able to produce to them.
- (3) Nothing in this Part shall be construed as requiring the Authority, in the discharge of their duties under this Part as respects licensed services and the programmes included in them, to listen to such programmes in advance of their being included in such services.

### Modifications etc. (not altering text)

**C53** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

## 96 Audience research.

- (1) The Authority shall make arrangements—
  - (a) for ascertaining the state of public opinion concerning programmes included in licensed services; and
  - (b) for the purpose of assisting them to perform their functions under Chapter II in connection with the programmes to be included in national and local services, for ascertaining the types of programme that members of the public would like to be included in licensed services.
- (2) Those arrangements shall—
  - (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Authority; and
  - (b) include provision for full consideration by the Authority of the results of any such research.

### Modifications etc. (not altering text)

**C54** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4 Sch. 1

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### *Prohibition on providing unlicensed independent radio services*

#### **97 Prohibition on providing independent radio services without a licence.**

- (1) Subject to subsection (2), any person who provides any independent radio service [F106 or any service falling within section 84(1)(d), (e) or (f)] without being authorised to do so by or under a licence under this Part [F107 or Part II of the Broadcasting Act 1996] shall be guilty of an offence.
- (2) The Secretary of State may, after consultation with the Authority, by order provide that subsection (1) shall not apply to such services or descriptions of services as are specified in the order.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) No proceedings in respect of an offence under this section shall be instituted—
  - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) Without prejudice to subsection (3) above, compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Textual Amendments**

**F106** Words in S. 97(1) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 7(a)** (with s. 43(1) (6)); S.I. 1996/2120, art. 4, **Sch. 1**

**F107** Words in S. 97(1) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 7(b)** (with s. 43(1) (6)); S.I. 1996/2120, art. 4, **Sch. 1**

#### **Modifications etc. (not altering text)**

**C55** S. 97(1) excluded by S.I. 1990/2536, art. 2(1)

## **CHAPTER II**

### **SOUND BROADCASTING SERVICES**

#### *National services*

#### **98 Applications for national licences.**

- (1) Where the Authority propose to grant a licence to provide a national service, they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;

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- (b) specifying—
    - (i) the period for which the licence is to be granted,
    - (ii) the minimum area of the United Kingdom for which the service is to be provided,
    - (iii) if the service is to be one falling within section 85(2)(a)(i) or (ii), that the service is to be such a service, and
    - (iv) if there is any existing licensed national service, that the service is to be one which caters for tastes and interests different from those already catered for by any such service (as described in the notice);
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 102(1)(c) if he were granted the licence.
- (2) In determining the minimum area of the United Kingdom for which a national service is to be provided the Authority shall have regard to the following considerations, namely—
- (a) that the service in question should, so far as is reasonably practicable, make the most effective use of the frequency or frequencies on which it is to be provided; but
  - (b) that the area for which it is to be provided should not be so extensive that the costs of providing it would be likely to affect the ability of the person providing the service to maintain it.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the applicant's proposals for providing a service that would both—
    - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), and
    - (ii) consist of a diversity of programmes calculated to appeal to a variety of tastes and interests;
  - (b) the fee specified in the notice under subsection (1)(d)(i);
  - (c) the applicant's proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his proposed service;
  - (d) the applicant's cash bid in respect of the licence;
  - (e) such information as the Authority may reasonably require—
    - (i) as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
    - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - (f) such other information as the Authority may reasonably require for the purpose of considering the application.

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- (4) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under any of paragraphs (a), (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Authority shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) the proposals submitted by him under subsection (3)(a); and
  - (c) such other information connected with his application as the Authority consider appropriate.
- (7) In this section “programme” does not include an advertisement.
- (8) In this Part “cash bid”, in relation to a licence, means an offer to pay to the Authority a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

## **99 Procedure to be followed by Authority in connection with consideration of applications for national licences.**

- (1) Where a person has made an application for a national licence in accordance with section 98, the Authority shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 100 unless it appears to them—
  - (a) that his proposed service would both—
    - (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, and
    - (ii) consist of such a diversity of programmes as is mentioned in subsection (3)(a) of that section; and
  - (b) that he would be able to maintain that service throughout the period for which the licence would be in force.
- (2) Any reference to an applicant in section 100 (except in section 100(9)(b)) is accordingly a reference to an applicant in whose case it appears to the Authority that the requirements of subsection (1)(a) and (b) above are satisfied.

## **100 Award of national licence to person submitting highest cash bid.**

- (1) Subject to the following provisions of this section, the Authority shall, after considering all the cash bids submitted by the applicants for a national licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Authority shall invite those

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applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.

- (3) The Authority may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to the Authority, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (4) If it appears to the Authority, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
  - (a) they shall refer his application to the Secretary of State, together with—
    - (i) a copy of all documents submitted to them by the applicant, and
    - (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (5) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (6) In subsections (4) and (5) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
  - (a) paying any amounts payable by him by virtue of section 102(1), or
  - (b) otherwise financing the provision of his proposed service.
- (7) Where the Authority are, by virtue of subsection (4), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (11)) have effect as if that person had not made an application for the licence.
- (8) Where the Authority have awarded a national licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
  - (a) publish the matters specified in subsection (9) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (9) The matters referred to in subsection (8)(a) are—
  - (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to the Authority that the requirement specified in section 99(1)(a) was satisfied;
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Authority’s reasons for the licence having been so awarded; and



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- (d) such other information as the Authority consider appropriate.
- (10) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (9) shall have effect as if—
  - (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (11) Subsections (1) to (6) shall not have effect as mentioned in subsection (7) if the Authority decide that it would be desirable to publish a fresh notice under section 98 in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if the Authority decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a further licence to provide the service in question.

#### **101 Failure to begin providing licensed service and financial penalties on revocation of licence.**

- (1) If at any time after a national licence has been granted to any person but before the licence has come into force—
  - (a) that person indicates to the Authority that he does not intend to provide the service in question, or
  - (b) the Authority for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,then, subject to subsection (2)—
  - (i) the Authority shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 100 shall (subject to section 100(11)) have effect as if he had not made an application for the licence.
- (2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Authority have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where the Authority revoke a national licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a financial penalty of the prescribed amount.
- (4) In subsection (3) “the prescribed amount” means—
  - (a) where—
    - (i) the licence is revoked under this section, or
    - (ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended,7 per cent. of the amount which the Authority estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 102(2) to (6)); and

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- (b) in any other case, 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 122(4), be recoverable by the Authority as a debt due to them from any person who controls that body.

**Modifications etc. (not altering text)**

**C56** S. 101(3) modified (1.11.1996) by 1996 c. 55, s. 145(6)(b) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

**102 Additional payments to be made in respect of national licences.**

- (1) A national licence shall include conditions requiring the licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 98(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
- (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
  - (b) in respect of charges made in that period for the reception of programmes included in that service.
- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—
- (a) the licence holder or any connected person, and
  - (b) a person acting as an advertising agent,
- the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of the commission.
- (5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.

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- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A national licence may include conditions—
- (a) enabling the Authority to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—
- (a) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (9) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—
- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
  - (b) the retail prices index for the month of November in the year preceding the relevant year;
- and for this purpose “the retail prices index” means the general index of prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer.

### **103 Restriction on changes in control over holder of national licence.**

- (1) Where—
- (a) any change in the persons having control over—
    - (i) a body to which a national licence has been awarded or transferred in accordance with this Part of this Act, or
    - (ii) an associated programme provider,takes place within the relevant period, and

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- (b) that change takes place without having been previously approved for the purposes of this section by the Authority,
- then (subject to subsection (5)) the Authority may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.
- (2) In subsection (1)—
- “associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and appears to the Authority to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service; and
- “the relevant period”, in relation to a national licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;
- and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection as if a body to which a national licence has been awarded but not yet granted were the holder of such a licence.
- (3) The Authority shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 98(3)(a) by that body (or, as the case may be, by the person to whom the licence was originally awarded).
- (4) The Authority may refuse so to approve any such change if, in any circumstances not falling within subsection (3), they consider it appropriate to do so.
- (5) The Authority shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.
- (6) Where under subsection (1) the Authority refuse to grant a licence to any body, section 100 shall (subject to section 100(11)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 111 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

**[<sup>F108</sup>103A] Renewal of national licences.**

- (1) A national licence may (subject to the following provisions of this section) be renewed on one occasion for a period of eight years beginning with the date of renewal.
- (2) An application for the renewal of a national licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) Where any such application is made before the relevant date—
- (a) if no simulcast radio service provided by the applicant is being broadcast in digital form when the application is made, the Authority shall postpone the consideration of the application until the relevant date or, if earlier, the date on which the broadcasting of such a service in that form begins, and

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- (b) in any other case, the Authority may postpone the consideration of the application for so long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a national licence has been duly made to the Authority, they shall (subject to subsection (5)) grant the application if, but only if—
- (a) the Authority are satisfied that the applicant would, if his licence were renewed, provide a national service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section),
  - (b) the applicant has given notice to the Authority under section 41(2)(a) of the Broadcasting Act 1996 of his intention to provide a service for broadcasting in digital form, and
  - (c) a simulcast radio service provided by the applicant is being broadcast in digital form or the Authority are satisfied that by the relevant date the applicant has done all that it would in the circumstances be reasonable to expect him to do by that date to procure the broadcasting of such a service within such time as the Authority consider reasonable.
- (5) Section 100(4) to (6) shall apply in relation to an applicant for the renewal of a national licence as those provisions apply in relation to such an applicant as is mentioned in section 100(4), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any application under this section the Authority—
- (a) may, in a case where a simulcast radio service provided by the applicant is not yet being broadcast in digital form on the relevant date, determine a date by which the broadcasting of such a service in that form must begin;
  - (b) shall determine an amount which is to be payable to the Authority by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (c) may specify a different percentage from that specified under section 98(1)(d) (i) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 102(1)(c) during the period for which the licence is to be renewed.
- (7) The amount determined by the Authority under subsection (6)(b) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 102(1)(a) if they were granting a fresh licence to provide the national service in question.
- (8) Where the Authority have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable (whether because subsection (3)(a) precluded the consideration of the application before that date or for any other reason), as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (6)(a),
  - (b) the amount determined by them under subsection (6)(b), and
  - (c) any percentage specified by them under subsection (6)(c),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.

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- (9) Where a national licence has been renewed under this section—
- (a) any conditions included in it in pursuance of section 102 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Authority under subsection (6)(b) were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (6)(c);
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a national licence is originally in force;
  - (c) where the Authority have determined a date under subsection (6)(a), they shall include in the licence as renewed a condition requiring a simulcast radio service to be broadcast in digital form throughout the period beginning with the date determined under subsection (6)(a) and ending with the date on which the licence (as renewed) is to expire; and
  - (d) the reference in section 111(4) to the end of the period for which a national licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.
- (10) Subsections (6)(a) and (9)(c) do not prejudice the generality of section 48(3)(b) of the Broadcasting Act 1996 (power to vary national licence to include conditions relating to digital broadcasting).

- (11) In this section—

“simulcast radio service” has the same meaning as in Part II of the Broadcasting Act 1996;

“the relevant date”, in relation to a national licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 98(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the national service formerly provided under that licence.]

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**Textual Amendments**

**F108** S. 103A inserted (24.7.1996) by 1996 c. 55, ss. 92, 149(e) (with s. 43(1)(6))

*Local and other services*

**104 Applications for other licences.**

- (1) Where the Authority propose to grant a licence to provide a local service, they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they propose to grant such a licence;
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided;
  - (c) inviting applications for the licence and specifying the closing date for applications; and
  - (d) stating the fee payable on any application made in pursuance of the notice.

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- (2) Any application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
  - (a) the fee specified in the notice under paragraph (d) of that subsection;
  - (b) the applicant’s proposals for providing a service that would—
    - (i) cater for the tastes and interests of persons living in the area or locality for which it would be provided or for any particular tastes and interests of such persons, and
    - (ii) broaden the range of programmes available by way of local services to persons living in that area or locality;
  - (c) such information as the Authority may reasonably require—
    - (i) as to the applicant’s present financial position and his projected financial position during the period for which the licence would be in force, and
    - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - (d) such other information as the Authority may reasonably require for the purpose of considering the application.
- (3) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under subsection (2)(b), (c) or (d).
- (4) The Authority shall, at the request of any person and on the payment by him of such sum (if any) as the Authority may reasonably require, make available for inspection by that person any information furnished under subsection (2)(b) by the applicants for a local licence.
- <sup>F109</sup>(5) .....
- (6) The following applications, namely—
  - <sup>F109</sup>(a) .....
  - (b) an application for a licence to provide a satellite or restricted service, shall be made in such manner as the Authority may determine, and shall be accompanied by such fee (if any) as the Authority may determine.
- (7) In this section and sections 105 and 106 “programme” does not include an advertisement.

**Textual Amendments**

**F109** S. 104(5)(6)(a) repealed (1.11.1996) by 1996 c. 55, ss. 94(2), 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

**[<sup>F110</sup>104A] Renewal of local licences.**

- (1) A local licence may (subject to the following provisions of this section) be renewed on one occasion for a period of eight years beginning with the date of renewal.
- (2) No application for the renewal of a local licence under subsection (1) may be made before the Authority first publish a notice pursuant to section 50(2) of the Broadcasting

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Act 1996 inviting applications for a licence to provide a relevant local radio multiplex service.

- (3) Subject to subsection (2), an application for the renewal of a local licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (4) The applicant must, in his application or at any time before the consideration of his application, nominate—
  - (a) a local digital sound programme service provided or to be provided by him, and
  - (b) a relevant local radio multiplex service,
 but may not nominate together a local digital sound programme service and a local radio multiplex service if another local licence held by him includes a condition in pursuance of subsection (12) relating to the broadcasting of that local digital sound programme service by that local radio multiplex service.
- (5) Where an application for the renewal of a local licence has been duly made to the Authority, they shall grant the application if—
  - (a) they are satisfied that the applicant would, if his licence were renewed, provide a local service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section), and
  - (b) the nominated local digital sound programme service provided by the applicant is being broadcast by means of the nominated local radio multiplex service.
- (6) Where the condition specified in subsection (5)(a) is satisfied, the Authority may grant the application even though the condition specified in subsection (5)(b) is not satisfied if—
  - (a) the applicant holds a licence to provide local digital sound programme services,
  - (b) a licence to provide the nominated local radio multiplex service has been awarded, and
  - (c) it appears to the Authority that, under a contract between the applicant and the person to whom that licence has been awarded, the applicant is obliged to provide the nominated local digital sound programme service for broadcasting by means of the nominated local radio multiplex service.
- (7) The Authority may in any case postpone consideration of the application until the relevant date.
- (8) If, at the relevant date, the condition specified in subsection (5)(b) is not satisfied, and any of the conditions specified in subsection (6) is not satisfied, the Authority may postpone consideration of the application for such period not exceeding twelve months as they think appropriate.
- (9) Where the Authority postpone consideration of an application under this section for any period beyond the relevant date (the “postponement period”), they shall extend the period for which the licence is in force by a period equal to the postponement period; and section 86(3) shall not limit the powers of the Authority under this subsection.
- (10) On the grant of any application under this section the Authority shall—



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- (a) where the nominated local digital sound programme service provided by the applicant is not being broadcast by means of the nominated local radio multiplex service, determine a date by which that service must have begun to be so broadcast; and
  - (b) specify a fee payable to the Authority in respect of the renewal.
- (11) Where the Authority have granted a person’s application under this section they shall formally renew his licence as soon afterwards as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (10)(a), and
  - (b) the renewal fee specified by them under subsection (10)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (12) Where the Authority renew a licence under this section they shall include in the licence as renewed a condition requiring the licence holder to do all that he can to ensure that the nominated local digital sound programme service is broadcast by means of the nominated local radio multiplex service throughout the period beginning with whichever is the later of—
- (a) the date on which the licence would expire if not renewed, and
  - (b) any date determined by them under subsection (10)(a),
- and ending with the date on which the licence (as renewed) is to expire.
- (13) In this section—
- (a) “local digital sound programme service” has the same meaning as in Part II of the Broadcasting Act 1996;
  - (b) “nominated” means nominated by the applicant under subsection (4);
  - (c) “relevant date”, in relation to a local licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 104(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the local service formerly provided under that licence; and
  - (d) “relevant local radio multiplex service”, in relation to a local licence, means a local radio multiplex service (within the meaning of Part II of the Broadcasting Act 1996) with a coverage area which to a significant extent includes the coverage area of the local service provided under the local licence; and for this purpose “coverage area”, in relation to a service, has the meaning given by paragraph 3A of Part I of Schedule 2.]

#### Textual Amendments

**F110** Ss. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

### 104B <sup>F111</sup> Special application procedure for local licences.

- (1) Where—
- (a) a local licence is due to expire (otherwise than by virtue of section 110),
  - (b) the local service provided under the licence falls within category B, C or D of the Table in paragraph 9 of Part III of Schedule 2, and

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- (c) the Authority propose to grant a further licence to provide the service in question,
- the Authority may if they think fit publish a notice under subsection (2) instead of a notice under section 104(1).
- (2) A notice under this subsection is a notice—
- (a) stating that the Authority propose to grant a further licence to provide a specified local service,
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided,
  - (c) inviting declarations of intent to apply for a licence to provide the service,
  - (d) specifying the closing date for such declarations, and
  - (e) specifying—
    - (i) the application fee payable on any declaration made in pursuance of the notice, and
    - (ii) a deposit of such amount as the Authority may think fit.
- (3) A declaration of intent made in pursuance of a notice under subsection (2) must be in writing and accompanied by the application fee and deposit specified under subsection (2)(e)(i) and (ii).
- (4) Where the Authority receive a declaration of intent in accordance with the provisions of this section from a person other than the licence holder in relation to the service in question, they shall—
- (a) publish a notice under section 104(1),
  - (b) specify—
    - (i) in relation to persons who have made a declaration of intent in accordance with the provisions of this section, no further application fee, and
    - (ii) in relation to all other applicants, an application fee of the same amount as the fee referred to in subsection (2)(e)(i), and
  - (c) repay the deposit referred to in subsection (2)(e)(ii) to every person—
    - (i) who has made a declaration of intent in accordance with the provisions of this section, and
    - (ii) who duly submits an application in pursuance of the notice referred to in paragraph (a).
- (5) Where the Authority receive a declaration of intent in accordance with the provisions of this section from the licence holder in relation to the service in question, and no such declaration from any other person, they shall—
- (a) invite the licence holder to apply for the licence in such manner as they may determine (but without requiring any further application fee), and
  - (b) on receiving an application duly made by him, repay to him the deposit referred to in subsection (2)(e)(ii).
- (6) The Secretary of State may by order amend subsection (1) by removing any of the categories of local service for the time being specified in that subsection, or by substituting for any of such categories any one or more categories of local service set out in the Table in paragraph 9 of Part III of Schedule 2.
- (7) Any order under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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### Textual Amendments

**F111** S. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5. Sch. 2

## 105 Special requirements relating to grant of local licences.

Where the Authority have published a notice under section 104(1), they shall, in determining whether, or to whom, to grant the local licence in question, have regard to the following matters, namely—

- (a) the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
- (b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;
- (c) the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and
- (d) the extent to which any application for the licence is supported by persons living in that area or locality.

*Miscellaneous provisions relating to national and local services*

## 106 Requirements as to character and coverage of national and local services.

- (1) A national or local licence shall include such conditions as appear to the Authority to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force, except to the extent that the Authority consent to any departure on the grounds—
  - (a) that it would not narrow the range of programmes available by way of independent radio services to persons living in the area or locality for which the service is licensed to be provided, or
  - (b) that it would not substantially alter the character of the service.
- (2) A national or local licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable.
- (3) A national licence shall include conditions enabling the Authority, where it appears to them to be reasonably practicable for the licensed service to be provided for any additional area falling outside the minimum area determined by them in accordance with section 98(2), to require the licence holder to provide the licensed service for any such additional area.

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- (4) Subject to subsection (5), the Authority may, if they think fit, authorise the holder of a local licence, by means of a variation of his licence to that effect, to provide the licensed service for any additional area or locality adjoining the area or locality for which that service has previously been licensed to be provided.
- (5) The Authority shall only exercise the power conferred on them by subsection (4) if it appears to them that to do so would not result in a substantial increase in the area or locality for which the service in question is licensed to be provided.
- (6) As soon as practicable after the Authority have exercised that power in relation to any service, they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they have exercised that power in relation to that service; and
  - (b) giving details of the additional area or locality for which that service is licensed to be provided.

**[<sup>F112</sup>106A] Variation of local licence following change of control.**

- (1) Any local licence granted to a body corporate before the commencement of this section shall be taken to include—
  - (a) a condition requiring the body to give the Authority advance notice of any proposals known to the body that may give rise to a relevant change of control, and
  - (b) a condition requiring the body to provide the Authority, in such manner and at such times as they may reasonably require, with such information as they may require for the purposes of exercising their functions under subsection (3).
- (2) Subsection (3) applies in relation to any local licence which—
  - (a) was granted before the commencement of this section,
  - (b) is held by a body corporate, and
  - (c) has not previously been varied under that subsection.
- (3) Where, in relation to any local licence to which this subsection applies—
  - (a) the Authority receive notice, in pursuance of a condition imposed under subsection (1) or section 88(2)(d), of any proposals that may give rise to a relevant change of control, or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to the Authority),

the Authority may vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions as they consider appropriate for the purpose of ensuring that the character of the local service is maintained after the relevant change of control.
- (4) Subject to subsection (5), any new or varied condition imposed under subsection (3) in relation to any matter may be more onerous than any existing condition imposed under section 106(1) in relation to that matter; and in this subsection “existing condition” means a condition of the licence as it has effect, or had effect, before the relevant change of control.
- (5) The Authority may not under subsection (3) include any new or varied condition in a licence unless the new condition or the condition as varied is one which (with any necessary modifications) would have been satisfied by the licence holder—
  - (a) during the three months immediately before the relevant date, or

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- (b) if the Authority consider that the performance of the licence holder during that period is not typical of its performance during the twelve months before the relevant date, during such other period of three months during those twelve months as they may notify in writing to the licence holder;  
and for the purposes of this subsection “the relevant date” is the date of the relevant change of control or, if earlier, the date on which the Authority exercise their powers under subsection (3).
- (6) The Authority shall not serve a notice on any body under subsection (3) unless they have given it a reasonable opportunity of making representations to them about the variation.
- (7) Where, in any case falling within paragraph (a) of subsection (3), a notice under that subsection is served before the change to which it relates takes place, the variation shall not take effect until the change to which it relates takes place.
- (8) The power in subsection (1) of section 106 to vary conditions imposed under that subsection includes power to vary conditions imposed under subsection (3).
- (9) In this section “relevant change of control” means a change in the persons having control over the body holding the licence.]

#### Textual Amendments

**F112** S. 106A inserted (1.11.1996) by 1996 c. 55, s. 93 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

### 107 Party political broadcasts.

- (1) A national licence shall include—
- (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and
  - (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Authority may determine.
- (2) Without prejudice to the generality of paragraph (b) of subsection (1), the Authority may determine for the purposes of that subsection—
- (a) the political parties on whose behalf party political broadcasts may be made; and
  - (b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.
- (3) Any rules made by the Authority for the purposes of this section may make different provision for different cases or circumstances.

### 108 Promotion of equal opportunities in relation to employment by holder of national licence.

- (1) A national licence shall include conditions requiring the licence holder—
- (a) to make arrangements for promoting, in relation to employment by him, equality of opportunity between men and women and between persons of different racial groups; and
  - (b) to review those arrangements from time to time.

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- (2) In subsection (1) “racial group” has the same meaning as in the <sup>M13</sup>Race Relations Act 1976.

**Marginal Citations**

**M13** 1976 c. 74.

*Enforcement of licences*

**109 Power to require scripts etc. or broadcasting of correction or apology.**

- (1) If the Authority are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may serve on him a notice—
- (a) stating that the Authority are so satisfied as respects any specified condition or direction;
  - (b) stating the effect of subsection (2); and
  - (c) specifying for the purposes of that subsection a period not exceeding twelve months.
- (2) If, at any time during the period specified in a notice under subsection (1), the Authority are satisfied that the licence holder has again failed to comply with any such condition or direction as is mentioned in that subsection (whether or not the same as the one specified in the notice), the Authority may direct him—
- (a) to provide the Authority in advance with such scripts and particulars of the programmes to be included in the licensed service as are specified in the direction; and
  - (b) in relation to such of those programmes as will consist of or include recorded matter, to produce to the Authority in advance for examination or reproduction such recordings of that matter as are so specified;
- and a direction under this subsection shall have effect for such period, not exceeding six months, as is specified in the direction.
- (3) If the Authority are satisfied—
- (a) that the holder of a licence has failed to comply with any condition of the licence, and
  - (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or apology (or both) under this subsection,
- they may (subject to subsection (4)) direct the licence holder to include in the licensed service a correction or apology (or both) in such form, and at such time or times, as they may determine.
- (4) The Authority shall not give any person a direction under subsection (3) unless they have given him a reasonable opportunity of making representations to the Authority about the matters complained of.
- (5) Where the holder of a licence includes a correction or apology in the licensed service in pursuance of a direction under subsection (3), he may announce that he is doing so in pursuance of such a direction.

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**Modifications etc. (not altering text)**

**C57** S. 109 applied (with modifications) (1.10.1996) by 1996 c. 55, ss. 62(10), 66(10) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

**110 Power to impose financial penalty or suspend or shorten licence period.**

- (1) If the Authority are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
  - (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Authority;
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years; or
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a national licence—
  - (a) shall, if such a penalty has not previously been imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 102(2) to (6)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Authority estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of any other licence shall not exceed £50,000.
- (4) The Authority shall not serve on any person such a notice as is mentioned in subsection (1)(a), (b) or (c) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), the Authority may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (6) It is hereby declared that any exercise by the Authority of their powers under subsection (1) of this section in respect of any failure to comply with any condition or direction shall not preclude any exercise by them of their powers under section 109 in respect of that failure.

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- (7) The Secretary of State may by order amend subsection (3) by substituting a different sum for the sum for the time being specified there; and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **111 Power to revoke licences.**

- (1) If the Authority are satisfied—
- (a) that the holder of a licence granted under this Chapter is failing to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, and
  - (b) that that failure is such that, if not remedied, it would justify the revocation of the licence,
- they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
- (a) stating that the Authority are satisfied as mentioned in subsection (1);
  - (b) specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and
  - (c) stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, the Authority will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Authority are satisfied—
- (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (4) If the Authority are satisfied in the case of any national licence—
- (a) that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and
  - (b) that it is appropriate for them to do so,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (5) If the Authority are satisfied—
- (a) that the holder of a licence granted under this Chapter provided them, in connection with his application for the licence, with information which was false in a material particular, or
  - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,
- they may (subject to subsection (8)) serve on him a notice revoking his licence.
- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.
- (7) If it appears to the Authority to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.



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- (8) The Authority shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

**Modifications etc. (not altering text)**

- C58** S. 111 modified (1.10.1996) by 1996 c. 55, s. 43(5) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**  
S. 111 applied (with modifications) (1.10.1996) by 1996 c. 55, **ss. 62(10), 66(10)** (with s. 43(1)(6));  
S.I. 1996/2120, art. 5, **Sch. 2**  
S. 111 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 59(8)(9) (with s. 43(1)(6)); S.I.  
1996/2120, art. 5, **Sch. 2**  
S. 111 modified (1.10.1996) by 1996 c. 55, s. 66(12) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

[<sup>F113</sup>**111A Enforcement of licences held by BBC companies.**

Where the Authority—

- (a) serve a notice on a BBC company under any provision of section 109, 110 or 111, or
- (b) receive any written representations from a BBC company under section 109(4), 110(4) or 111(8),

the Authority shall send a copy of the direction, notice or representations to the Secretary of State.]

**Textual Amendments**

- F113** S. 111A inserted (24.7.1996) by 1996 c. 55, s. 136, 149(1)(f), **Sch. 8 para. 7** (with s. 43(1)(6))

[<sup>F114</sup>**111B Power to suspend licence to provide satellite service.**

(1) If the Authority are satisfied—

- (a) that the holder of a licence to provide a satellite service has included in the service one or more programmes containing material likely to encourage or incite to crime or to lead to disorder,
  - (b) that he has thereby failed to comply with the condition included in the licence in pursuance of section 90(1)(a), and
  - (c) that the failure is such as to justify the revocation of the licence,
- they shall serve on the holder of the licence a notice under subsection (2).

(2) A notice under this subsection is a notice—

- (a) stating that the Authority are satisfied as mentioned in subsection (1),
- (b) specifying the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned in paragraph (b) of that subsection,
- (c) stating that the Authority may revoke his licence after the end of the period of twenty-one days beginning with the date on which the notice is served on the licence holder,
- (d) informing the licence holder of his right to make representations to the Authority within that period about the matters complained of, and

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- (e) suspending the licence as from the time when the notice is served on the licence holder until the revocation takes effect or the Authority decide not to revoke the licence.
- (3) If the Authority, having considered any representations about the matters complained of made to them within the period referred to in subsection (2)(c) by the licence holder, are satisfied that it is necessary in the public interest to revoke the licence in question, they shall serve on the licence holder a notice revoking the licence.
- (4) A notice under subsection (3) shall not take effect until the end of the period of twenty-eight days beginning with the day on which that notice was served on the licence holder.
- (5) Section 111 shall not have effect in relation to the revocation of a licence in pursuance of a notice under subsection (1).]

#### Textual Amendments

**F114** S. 111B inserted (1.11.1996) by 1996 c. 55, s. 96 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

## CHAPTER III

### LICENSABLE SOUND PROGRAMME SERVICES

#### 112 Licensable sound programme services.

- (1) In this Part “licensable sound programme service” means (subject to subsection (2)) a service consisting in the provision by any person of sound programmes with a view to their being conveyed, by means of a telecommunication system, for reception—
  - (a) in two or more dwelling-houses in the United Kingdom, and
  - (b) otherwise than for the purpose of being received there by persons who have a business interest in receiving them,
 whether the telecommunication system is run by the person so providing the programmes or by some other person, and whether the programmes are to be so conveyed for simultaneous reception or for reception at different times in response to requests made by different users of the service.
- (2) Subsection (1) does not apply to—
  - (a) a service where the programmes are provided for transmission in the course of the provision of a sound broadcasting service [<sup>F115</sup>or a radio multiplex service (as defined by section 40(1) of the Broadcasting Act 1996)];
  - (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the <sup>M14</sup>Telecommunications Act 1984; or
  - (c) a two-way service (as defined by section 46(2)(c)).
- (3) It is hereby declared that the person who does either or both of the following things, that is to say—
  - (a) uses a telecommunication system for conveying sound programmes as mentioned in subsection (1), or
  - (b) runs a telecommunications system which is so used,

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is not to be regarded as providing a licensable sound programme service in respect of any such programmes except to the extent that they are provided by that person with a view to their being so conveyed by means of that system.

- (4) It is hereby also declared that where—
- (a) any service constitutes such a service as is mentioned in subsection (1), and
  - (b) the sound programmes in respect of which the service is provided are provided for transmission in the course of the provision of any additional service,
- that service is licensable under section 113 as a licensable sound programme service, and not otherwise; and in this subsection “additional service” means an additional service within the meaning of this Part or Part I.
- (5) For the purposes of this section a person has a business interest in receiving programmes if he has an interest in receiving them for the purposes of his business, trade, profession or employment.

#### Textual Amendments

**F115** Words in S. 112(2)(a) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 8** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

#### Marginal Citations

**M14** 1984 c. 12.

### 113 Licensing etc. of licensable sound programme services.

- (1) An application for a licence to provide a licensable sound programme service shall—
- (a) be made in such manner as the Authority may determine; and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) Where such an application is duly made to the Authority, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 90(1) and (2).
- (3) Subject to subsection (4), sections 109 to 111 shall apply in relation to a licence to provide a licensable sound programme service as they apply in relation to a licence granted under Chapter II of this Part.
- (4) Section 111 shall apply in relation to such a licence with the omission of subsection (7).

## CHAPTER IV

### ADDITIONAL SERVICES PROVIDED ON SOUND BROADCASTING FREQUENCIES

### 114 Additional services.

- (1) In this Part “additional service” means any service which consists in the sending of telecommunication signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any sound broadcasting service provided—
- (a) on a frequency assigned under section 84(4), or

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- (b) on any other allocated frequency notified to the Authority by the Secretary of State.
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be—
- (a) where the service is provided on a frequency assigned under section 84(4), any part of those signals which is not required for the purposes of the provision of that service and is determined by the Authority to be available for the provision of additional services;
- (b) where the service is provided on a frequency notified to the Authority under subsection (1)(b) above, such part of those signals as the Secretary of State may specify when making the notification;
- and references in this Part to spare capacity shall be construed accordingly.
- (3) The Authority shall, when determining under subsection (2)(a) the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency on which a national service is provided, have regard to any need of the person providing that service to be able to use part of the signals carrying it for providing services which are ancillary to programmes included in the service.
- (4) A person holding a national licence shall be taken for the purposes of this Part to be authorised by his licence to provide any such services as are mentioned in subsection (3).
- (5) The Secretary of State may, when making any notification under subsection (1)(b), specify a date beyond which the frequency in question is not to be used for the provision of additional services; and any such notification shall accordingly cease to have effect on that date.
- (6) In this section—
- “allocated frequency” means a frequency allocated to the United Kingdom for the provision of sound broadcasting services;
- “telecommunication signals” means anything falling within paragraphs (a) to (d) of section 4(1) of the <sup>M15</sup>Telecommunications Act 1984 (meaning of “telecommunication system”).

**Marginal Citations**

M15 1984 c. 12.

**115 Licensing of additional services.**

- (1) The Authority shall do all that they can to secure that, in the case of each of the following frequencies, namely—
- (a) any frequencies assigned under section 84(4) and used for the provision of a national service, and
- (b) any frequencies notified to the Authority under section 114(1)(b),
- all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by the Authority in accordance with this section.

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- (2) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.
- (3) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Authority may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (4) Subsection (3) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act.
- (5) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (3) as they apply in relation to the provision of such services by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.
- (6) Every licence to provide a national service shall include such conditions as appear to the Authority to be appropriate for securing that the licence holder grants—
  - (a) to any person who holds a licence to provide additional services on the frequency on which that national service is provided, and
  - (b) to any person who is authorised by any such person as mentioned in subsection (3) to provide additional services on that frequency,access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.
- (7) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (6) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by the Authority.
- (8) The holder of a licence to provide a local, restricted or satellite service shall be taken for the purposes of this Part to be authorised by his licence to provide, or to authorise another person to provide, additional services on the frequency on which the licensed service is provided.
- (9) In this Part “additional services licence” means a licence to provide additional services.

## 116 Applications for additional services licences.

- (1) Where the Authority propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the period for which the licence is to be granted,
    - (ii) the sound broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (iii) (subject to the approval of the Secretary of State) the extent and nature of the spare capacity which is to be allocated by the licence;

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- (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 118(1)(c) if he were granted the licence.
- (2) The Authority may, if they think fit, specify under subsection (1)(d)(ii)—
- (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan indicating—
    - (i) the nature of any additional services which the applicant proposes to provide, and
    - (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 115(3);
  - (c) the applicant's cash bid in respect of the licence; and
  - (d) such information as the Authority may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Authority shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
  - (c) such other information connected with his application as the Authority consider appropriate.

## **117 Procedure to be followed by Authority in connection with consideration of applications for, and awarding of, licences.**

- (1) Where a person has made an application for an additional services licence in accordance with section 116, the Authority shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—

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- (a) that the technical plan submitted under section 116(3)(b) is, so far as it involves the use of any telecommunication system, acceptable to the relevant licensing authorities; and
  - (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;
- and any reference to an applicant in section 100 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to the Authority that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Before forming any view as to whether the requirement specified in subsection (1)(a) is satisfied in the case of an applicant the Authority shall consult the relevant licensing authorities.
  - (3) Subject to subsection (4), section 100 shall apply in relation to an additional services licence as it applies in relation to a national licence.
  - (4) In the application of section 100 in relation to an additional services licence—
    - (a) subsection (6) shall have effect with the substitution in paragraph (a) of a reference to section 118(1) for the reference to section 102(1); and
    - (b) subsection (9) shall have effect with the substitution in paragraph (b) of a reference to the requirement specified in subsection (1)(a) above for the reference to the requirement specified in section 99(1)(a).
  - (5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—
    - (a) that person indicates to the Authority that none of the services in question will be provided once the licence has come into force, or
    - (b) the Authority for any other reason have reasonable grounds for believing that none of those services will be so provided,then, subject to subsection (6)—
    - (i) the Authority shall serve on him a notice revoking the licence as from the time the notice is served on him, and
    - (ii) section 100 (as applied by subsection (3) above) shall, subject to section 100(11), have effect as if he had not made an application for the licence.
  - (6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Authority have served on him a notice stating their grounds for believing that none of the services in question will be provided once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
  - (7) In this section “the relevant licensing authorities” means the Secretary of State and the Director General of Telecommunications.

## **118 Additional payments to be made in respect of additional services licences.**

- (1) An additional services licence shall include conditions requiring the licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 87(1)(c))—

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- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 116(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
- (a) enabling the Authority to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
- (a) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

## **119 Additional services not to interfere with other transmissions.**

- (1) An additional services licence may include such conditions as the Authority consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
- (a) the sound broadcasting service or services on whose frequency or frequencies it is provided, or
  - (b) any other wireless telegraphy transmissions.
- (2) Before imposing any conditions in pursuance of subsection (1) the Authority shall consult the relevant licensing authorities (within the meaning of section 117).



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## **120 Enforcement of additional services licences.**

- (1) If the Authority are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may (subject to subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to the Authority.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)—
  - (a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period falling within the relevant period (as determined in accordance with section 118(2)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);and, in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Authority estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Authority shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Section 111 shall apply in relation to an additional services licence as it applies in relation to a licence granted under Chapter II of this Part, but with the omission of subsection (7).

## **CHAPTER V**

### **SUPPLEMENTAL**

## **121 Computation of qualifying revenue.**

Part II of Schedule 7 (which contains provisions relating to the computation of qualifying revenue for the purposes of this Part) shall have effect.

## **122 Certain receipts of Authority to be paid into Consolidated Fund.**

- (1) Where the Authority receive in respect of any licence any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Authority but shall—
  - (a) if the licence is for the provision of a service for any area, locality, establishment or other place, or for any event, in Great Britain, be paid into the Consolidated Fund of the United Kingdom;
  - (b) if the licence is for the provision of a service for any area, locality, establishment or other place, or for any event, in Northern Ireland, be paid into the Consolidated Fund of Northern Ireland; or

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- (c) if the licence is for the provision of a national or satellite service or any additional services, be paid into both of those Funds in such proportions as the Authority consider appropriate.
- (2) The amounts referred to in subsection (1) are—
- (a) any amount payable to the Authority by virtue of section 102(1) or 118(1);
  - (b) any amount payable to them by virtue of section 101(3); and
  - (c) any amount payable to them by virtue of section 110(1)(a), 113(3) or 120(1).
- (3) Subsection (1) shall not be construed as applying to any amount which is required by the Authority for the making of an adjustment in respect of an overpayment made by any person.
- (4) Any amount payable by any person to the Authority under or by virtue of this Part shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of any licence under this Part, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (5) The Authority shall, in respect of each financial year, prepare an account showing—
- (a) all such amounts falling within subsection (1) as have been received by them, and
  - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,
- and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

### **123 Frequency planning and general research and development.**

- (1) The Authority may make arrangements for such work relating to frequency planning to be carried out as they consider appropriate in connection with the discharge of their functions.
- (2) Any such work shall be directed towards securing that the frequencies assigned to the Authority under this Act are used as efficiently as is reasonably practicable.
- (3) The Authority may make arrangements for such research and development work to be carried out as they consider appropriate in connection with the discharge of their functions.
- (4) The Authority shall secure that, so far as is reasonably practicable—
  - (a) any work carried out under arrangements made in pursuance of subsection (1) or (3) is carried out, under the supervision of the Authority, by persons who are neither members nor employees of the Authority; and
  - (b) any work carried out under arrangements made in pursuance of subsection (3) is to a substantial extent financed by persons other than the Authority.

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## **124 Authority to assist Secretary of State in connection with licensing functions under 1949 Act.**

The Authority shall give to the Secretary of State such information or other assistance as he may reasonably require in connection with his functions under section 1 of the <sup>M16</sup>Wireless Telegraphy Act 1949 as respects the granting, variation or revocation of licences under that section.

### **Marginal Citations**

**M16** 1949 c. 54.

## **125 Representation by Authority of Government and other interests in connection with broadcasting matters.**

The functions of the Authority shall include representing—

- (a) Her Majesty’s Government in the United Kingdom, and
- (b) persons providing independent radio services,

on bodies concerned with the regulation (whether nationally or internationally) of matters relating to sound broadcasting.

## **126 Interpretation of Part III.**

(1) In this Part (unless the context otherwise requires)—

“additional service” and “additional services licence” shall be construed in accordance with section 114(1) and section 115(9) respectively;

“the appropriate percentage”, in relation to any year, has the meaning given by section 102(10);

“assigned frequency” means a frequency for the time being assigned to the Authority under section 84(4);

“the Authority” means the Radio Authority established under this Part;

“cash bid” has the meaning given by section 98(8);

“independent radio service” has the meaning given by section 84(1);

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“licensable sound programme service” has the meaning given by section 112(1);

“local licence” and “national licence” mean a licence to provide a local service and a licence to provide a national service, respectively;

“local service”, “national service”, “restricted service” and “satellite service” shall be construed in accordance with section 84(2);

“sound broadcasting service” means a broadcasting service whose broadcasts consist of transmissions in sound only [<sup>F116</sup>but does not include a radio multiplex service (as defined by section 40(1) of the Broadcasting Act 1996)];

“spare capacity” shall be construed in accordance with section 114(2).

(2) Any reference in this Part to an area in the United Kingdom does not include an area which comprises or includes the whole of England; and nothing in this Part shall be read as precluding a local service from being provided for an area or locality that is

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to any extent comprised in the area or locality for which another local service is to be provided.

- (3) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

#### **Textual Amendments**

**F116** Words in s. 126 inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 9** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

## **PART IV**

### TRANSFER OF UNDERTAKINGS OF IBA AND CABLE AUTHORITY

#### *Transfer of undertakings*

#### **127 Division of assets of IBA and their dissolution.**

- (1) On such day as the Secretary of State may by order appoint as the transfer date there shall come into force a scheme made under Schedule 9 to this Act and providing for the division of the property, rights and liabilities of the IBA between—
- (a) the Commission,
  - (b) the Radio Authority, and
  - (c) a company nominated for the purposes of this subsection by the Secretary of State.
- (2) The Secretary of State may, by order made before the transfer date, nominate for the purposes of subsection (1) any company formed and registered under the <sup>M17</sup>Companies Act 1985; but on that date the company must be a company limited by shares which is wholly owned by the Crown.
- (3) Subject to subsection (4), the IBA shall continue in existence after the transfer date until such time as they are dissolved by order made by the Secretary of State.
- (4) On the transfer date the chairman and members of the IBA shall cease to hold office; and as from that date the IBA—
- (a) shall consist only of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as the Secretary of State may appoint as members of the IBA; and
  - (b) shall have only the functions which fall to be carried out by the IBA under or by virtue of Schedule 9.
- (5) If requested to do so by the chairman appointed under subsection (4)(a), the Commission shall furnish the IBA with any assistance required by them for the purpose of carrying out any of those functions.

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- (6) The Secretary of State shall not make an order under subsection (3) unless he is satisfied, after consultation with the IBA and with each of the bodies referred to in subsection (1)(a) to (c), that nothing further remains to be done by the IBA under or by virtue of Schedule 9.

**Modifications etc. (not altering text)**

**C59** [S. 127\(1\)](#): 1.1.1991 appointed as the transfer date for the purposes of s. 127(1) by [S.I. 1990/2540](#), [art. 2](#)

**Marginal Citations**

**M17** [1985 c. 6](#).

**128 Vesting in Commission of assets of Cable Authority and dissolution of Authority.**

- (1) On the transfer date all the property, rights and liabilities to which the Cable Authority were entitled or subject immediately before that date shall become property, rights and liabilities of the Commission; and Schedule 10 to this Act shall have effect for the purpose of supplementing this and the following provisions of this section.
- (2) Subject to subsection (3), the Cable Authority shall continue in existence after the transfer date until such time as they are dissolved by order made by the Secretary of State.
- (3) On the transfer date the chairman and members of the Cable Authority shall cease to hold office; and as from that date the Authority—
- shall consist only of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as the Secretary of State may appoint as members of the Authority; and
  - shall have only the functions which fall to be carried out by the Authority under or by virtue of Schedule 10.
- (4) If requested to do so by the chairman appointed under subsection (3)(a), the Commission shall furnish the Cable Authority with any assistance required by them for the purpose of carrying out any of those functions.
- (5) The Secretary of State shall not make an order under subsection (2) unless he is satisfied, after consultation with the Cable Authority and the Commission, that nothing further remains to be done by the Authority under or by virtue of that Schedule.
- (6) References in this Part to property, rights and liabilities of the Cable Authority include references to property, rights and liabilities which are not capable of being transferred or assigned by the Authority.

*Transitional arrangements*

**129 Transitional arrangements relating to IBA's broadcasting services.**

- (1) Schedule 11 to this Act shall have effect—
- with respect to the provision by the Commission and the Welsh Authority, during the period beginning with the transfer date and ending with 31st

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- December 1992, of television broadcasting services which have been provided by the IBA under the <sup>M18</sup>Broadcasting Act 1981 down to the transfer date;
- (b) for the purpose of the regulation by the Commission after the end of that period of services provided in succession to the DBS services provided by them during that period; and
- (c) in the case of local sound broadcasting services which have been provided by the IBA down to the transfer date—
- (i) with respect to the provision of such services on and after that date by the Radio Authority, and
  - (ii) for the purpose of the regulation by that Authority on and after that date of services provided in succession to such services.
- (2) The programmes provided by a programme contractor under his contract for inclusion in any broadcasting service provided by the Commission or the Radio Authority in accordance with Part II or IV of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission or the Radio Authority (as the case may be) but shall be transmitted—
- (a) by the nominated company in pursuance of a contract made between that company and the programme contractor in accordance with section 130, or
  - (b) under arrangements made in accordance with subsection (3)(a) of that section in a case where any such contract made between a DBS programme contractor and that company is terminated by the contractor as mentioned in that provision.
- (3) The programmes broadcast on Channel 4 and S4C respectively during the interim period in accordance with Part II of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission but shall be transmitted by the nominated company—
- (a) in the case of the programmes broadcast on Channel 4, in pursuance of such a contract made between that company and the Channel 4 company as is mentioned in subsection (4), and
  - (b) in the case of the programmes broadcast on S4C, in pursuance of such a contract made between the nominated company and the Welsh Authority as is mentioned in subsection (6).
- (4) The contract referred to in subsection (3)(a) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on Channel 4 during that period, and in particular makes provision—
- (a) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company; and
  - (b) for the transmission of those programmes to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify.
- (5) The circumstances referred to in subsection (4)(b) are circumstances where the Commission consider it necessary to require the transmission of the programmes in question to be suspended in order for them to comply, or secure compliance, with the provisions of the <sup>M19</sup>Broadcasting Act 1981 (as it has effect in accordance with Part II of Schedule 11 to this Act) or with any restriction or requirement imposed thereunder.

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- (6) The contract referred to in subsection (3)(b) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on S4C during that period, and in particular makes provision for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company.
- (7) In the following provisions, namely—
- (a) Parts II and IV of Schedule 11 to this Act, and
  - (b) any provision of the <sup>M20</sup>Broadcasting Act 1981 which is to be construed as referring to the Commission or to the Radio Authority by virtue of either of those Parts of that Schedule,
- any reference (however expressed) to the broadcasting of programmes, or to programmes broadcast, by the Commission or the Radio Authority shall, in consequence of subsections (2) and (3) above, be read as a reference to the broadcasting of programmes, or to programmes broadcast, by that body whether the transmission of the programmes is undertaken (according to the circumstances of the case)—
- (i) by, or under arrangements made by, that body, or
  - (ii) by the nominated company in pursuance of any such contract as is referred to in either of those subsections, or
  - (iii) under any such arrangements as are referred to in subsection (2)(b);
- and those Parts of that Schedule contain other modifications of provisions of that Act which are consequential on those subsections.
- (8) This section and section 130 shall have effect in relation to any teletext service provided by the Commission in accordance with Part II of Schedule 11 as if—
- (a) any reference to a programme or television programme were a reference to a teletext transmission; and
  - (b) any reference to a programme contractor were a reference to a teletext contractor.
- (9) This section and section 130 shall, in so far as they apply to the transmission of the programmes provided by a DBS programme contractor under his contract for inclusion in any DBS service provided by the Commission in accordance with Part II of Schedule 11, be construed as applying only to the carrying on of such activities in connection with the transmission of those programmes as were being so carried on by the IBA immediately before the transfer date.
- (10) In this section—
- “the Channel 4 company” means the body corporate referred to in section 12(2) of the Broadcasting Act 1981, and “on Channel 4” means in the additional broadcasting service referred to in section 10(1) of that Act, but excluding so much of that service as consisted, immediately before the transfer date, in the broadcasting of programmes for reception wholly or mainly in Wales;
  - “the interim period” means the period specified in subsection (1)(a) above;
  - “on S4C” has the same meaning as in Part I of this Act.
- (11) The reference in subsection (4) or (6) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date.

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#### Marginal Citations

**M18** 1981 c. 68.

**M19** 1981 c. 68.

**M20** 1981 c. 68.

### 130 Variation of programme contracts to take account of new transmission arrangements.

- (1) Subject to subsections (2) and (4), it shall be the duty of the IBA to make before the transfer date such variations of each contract between them and a programme contractor (“the programme contract”) as appear to them to be appropriate—
- (a) for requiring the programme contractor to enter into a contract with the nominated company which makes provision for and in connection with the transmission by that company during the interim period of the programmes which the programme contractor has the right and the duty to provide under the programme contract, and in particular makes provision—
    - (i) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company,
    - (ii) for the transmission of those programmes to be suspended, if the relevant authority so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify, and
    - (iii) where the programme contractor is a TV programme contractor, for the consideration payable in respect of the transmission of those programmes to be payable in accordance with subsection (6); and
  - (b) for securing that the right and the duty of the programme contractor under the programme contract to provide those programmes is accordingly (so long as any such contract with the nominated company remains in force) a right and a duty to provide them for transmission by that company.
- (2) Subsection (1) shall apply to a contract for the provision of television programmes for broadcasting in a DBS service (“a DBS programme contract”) as if—
- (a) the reference to coverage in paragraph (a)(i) were omitted; and
  - (b) for paragraph (a)(iii) there were substituted—
 

“(iii) for the programme contractor to be entitled to terminate the contract if he is notified by the Commission that they are satisfied that the standards referred to in sub-paragraph (i) are not being attained as mentioned in that sub-paragraph;”.
- (3) The IBA shall, in the case of any DBS programme contract, make before the transfer date such variations of the contract as appear to them to be appropriate—
- (a) for requiring the DBS programme contractor, if he terminates his contract with the nominated company under any provision included in the contract in consequence of subsection (2)(b), to make such arrangements as the Commission may approve for and in connection with the transmission during the interim period of the programmes which he has the right and the duty to provide under the DBS programme contract, being arrangements under which—



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- (i) specified standards relating to technical quality and reliability are to be attained in connection with the transmission of those programmes under the arrangements, and
    - (ii) the transmission of those programmes is to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify; and
  - (b) for securing that the right and the duty of the programme contractor under the DBS programme contract to provide those programmes is accordingly (so long as any such arrangements remain in force) a right and a duty to provide them for transmission under the arrangements.
- (4) Subsection (1) shall apply to a contract for the provision of local sound broadcasts as if the reference to the interim period were a reference to the remainder of the period for which the contract continues in force by virtue of paragraph 2(1) in Part IV of Schedule 11; and that subsection accordingly does not apply to any such contract if—
  - (a) the programme contractor notifies the IBA, before such date as they shall determine, that he proposes to request the Radio Authority to determine the contract as from the transfer date in accordance with paragraph 1(1) in Part V of that Schedule; or
  - (b) the contract is one to which paragraph 2(1) in that Part of that Schedule would apply on the transfer date.
- (5) The circumstances referred to in paragraph (a)(ii) of subsection (1) or (3) are circumstances where the relevant authority or (as the case may be) the Commission consider it necessary to require the transmission of the programmes in question to be suspended—
  - (a) in order for them to comply, or secure compliance, with the provisions of the <sup>M21</sup>Broadcasting Act 1981 (as it has effect in accordance with Schedule 11 to this Act) or with any restriction or requirement imposed thereunder, or
  - (b) in view of any matter which they consider constitutes or would constitute a breach of the programme contractor's contract.
- (6) The IBA shall make before the transfer date such variations of each contract between them and a TV programme contractor as appear to them to be appropriate for requiring the programme contractor to enter into an agreement with all of the other TV programme contractors which—
  - (a) relates to the payment by those contractors to the nominated company of the consideration payable by them in respect of the transmission by that company of the programmes provided by them; and
  - (b) provides for the amounts payable by each of the contractors to be such proportion of the total consideration so payable as corresponds to the proportion of the relevant amount which he was liable to pay by virtue of section 32(1)(a) of the Broadcasting Act 1981 (rental payments) in respect of the period beginning with 1st April 1990 and ending with the transfer date;and in paragraph (b) “the relevant amount” means the aggregate amount of all payments falling to be made by TV programme contractors by virtue of section 32(1)(a) of that Act in respect of that period (excluding any payments falling to be so made in consequence of section 13(2) of that Act (advertisements on Channel 4)).

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- (7) The IBA shall, in the case of each such contract as is mentioned in subsection (6), also make before the transfer date such variations of the contract as appear to them to be appropriate in consequence of section 129(3).
- (8) In this section—
- “the interim period” means the period specified in section 129(1)(a);
- “the relevant authority”—
- (a) in relation to any such contract as is mentioned in subsection (1)(a) which relates to the transmission of television programmes, means the Commission, and
- (b) in relation to any such contract which relates to the transmission of local sound broadcasts, means the Radio Authority;
- and section 129(8) and (9) apply for the purposes of this section.
- (9) Any reference in subsection (1) or (3) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date; and different standards may be so specified for the purposes of subsection (1) in relation to programme contractors of different descriptions.

#### **Marginal Citations**

**M21** 1981 c. 68.

### **131 Supplementary provisions relating to variation of programme contracts.**

- (1) Where the IBA make any variation of a programme contract in pursuance of section 130(1) to (4) or (6), they may make such variations of that contract of a supplemental, incidental, consequential or transitional nature as they consider appropriate.
- (2) The relevant authority may on or after the transfer date make any variation of a programme contract which could have been made before that date by the IBA—
- (a) in pursuance of section 130(1) to (4), or
- (b) in pursuance of subsection (1) above in connection with any variation made in pursuance of section 130(1) to (4);
- and any such variation may be made with retrospective effect as from that date.
- (3) Before making any variation of a programme contract in pursuance of any provision of section 130, this section or Schedule 11, the IBA or (as the case may be) the relevant authority shall consult the programme contractor concerned.
- (4) Any such variation shall be made by means of a notice served on that programme contractor.
- (5) In this section—
- “programme contract” means a contract between the IBA and a programme contractor;
- “programme contractor” includes a teletext contractor;
- “the relevant authority”—
- (a) in relation to a programme contract for the provision of television programmes or teletext transmissions, means the Commission; and

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- (b) in relation to a programme contract for the provision of local sound broadcasts, means the Radio Authority.

### **132 Disposal by IBA of DBS transmitting equipment etc.**

- (1) The IBA shall have power, with the approval of the Secretary of State—
  - (a) to dispose of any relevant assets to a DBS contractor; and
  - (b) to do so on such terms and for such consideration as they may determine (whether or not any such consideration represents the market value of the assets).
- (2) Any disposal under subsection (1) shall take effect on the transfer date.
- (3) In this section “relevant asset” means any equipment or other asset (of whatever description) which has been used or held by the IBA in connection with the transmission of DBS services.

### **133 Functions exercisable by IBA before transfer date in connection with local sound broadcasting.**

- (1) It shall be the duty of the IBA to prepare before the transfer date, in the case of each relevant programme contractor, a contract which—
  - (a) is expressed to be made between the nominated company and the contractor; and
  - (b) is to come into force in accordance with subsection (3) at such time (if any) as the contractor becomes the holder of a local licence by virtue of paragraph 1(1) in Part V of Schedule 11 to this Act; and
  - (c) makes provision in connection with the transmission, as from any such time, of the programmes included in the local service provided by the contractor (as the holder of such a licence), which may include provision for the transmission of those programmes by the nominated company.
- (2) For the purposes of subsection (1) the IBA shall, after consultation with all the relevant programme contractors, draw up a number of different standard forms of contract, and each contract prepared by them under that subsection shall be in such one of those forms as they may determine after consultation with the relevant programme contractor concerned.
- (3) Any contract prepared under subsection (1) shall by virtue of this subsection come into force, as a contract between the nominated company and the relevant programme contractor concerned, at any such time as is mentioned in paragraph (b) of that subsection and (subject to the provisions of the contract) shall continue in force for such period as is specified in it, being a period expiring not later than 31st December 1994.
- (4) If—
  - (a) any contract prepared under subsection (1) has not yet come into force, and
  - (b) the nominated company and the relevant programme contractor concerned agree that it would be more appropriate for them to be parties to a contract which is in one of the other forms of contract drawn up as mentioned in subsection (2), and
  - (c) the nominated company prepares such a contract as is mentioned in subsection (1) which is in that other form,

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subsection (3) shall have effect in relation to that contract as if it had been prepared by the IBA under subsection (1) (and accordingly shall not have effect in relation to the contract referred to in paragraph (a) above).

- (5) The IBA shall be deemed to have had power to impose such requirements as have been imposed by them on the various local sound programme contractors with respect to the making of payments to the IBA for the purpose of enabling reductions to be made in relevant charges; and in this subsection “relevant charges” means charges made by the nominated company in connection with the transmission, during the period beginning with the transfer date and ending with 31st December 1994, of programmes which are included in local services falling within any description of such services determined by the IBA.
- (6) The IBA shall have power, with the approval of the Secretary of State—
- (a) to dispose of, or of an interest in, any relevant assets to a relevant programme contractor; and
  - (b) to do so on such terms and for such consideration as they may determine (whether or not any such consideration represents the market value of the assets).

- (7) In this section—

“local licence” and “local service” have the same meaning as in Part III of this Act;

“local sound programme contractor” means a person who is a programme contractor by virtue of a contract for the provision of local sound broadcasts;

“relevant asset” means any equipment or other asset (of whatever description) which has been used or held by the IBA in connection with the transmission of local sound broadcasts;

“relevant programme contractor” means the programme contractor under a contract which, if effective immediately before the transfer date, would be a contract to which paragraph 2(1) in Part IV of Schedule 11 applied.

### 134 Transitional arrangements relating to existing cable services.

Schedule 12 to this Act shall have effect—

- (a) for the purpose of the regulation by the Commission on and after the transfer date of—
  - (i) diffusion services (within the meaning of Part I of the <sup>M22</sup>Cable and Broadcasting Act 1984) which, immediately before that date, were authorised to be provided under that Part of that Act, and
  - (ii) services provided in succession to such services; and
- (b) for the purpose of the regulation by the Commission or the Radio Authority on and after the transfer date of services provided in succession to restricted services (within the meaning of that Part of that Act) which, immediately before that date, were authorised to be provided under that Part of that Act.

#### Marginal Citations

M22 1984 c. 46.

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### *Provisions relating to nominated company*

#### **135 Initial Government holding in nominated company.**

- (1) As a consequence of the vesting in the nominated company, in accordance with the scheme made under Schedule 9 to this Act, of property, rights and liabilities of the IBA, that company shall issue to the Secretary of State such securities of the company as he may from time to time direct.
- (2) The Secretary of State shall not give a direction under subsection (1) at a time when the nominated company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued at such time or times, and (subject to subsection (4)) on such terms, as the Secretary of State may direct.
- (4) Any shares issued in pursuance of this section—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the <sup>M23</sup>Companies Act 1985 as if they had been paid up by virtue of the payment to the nominated company of their nominal value in cash.
- (5) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued to him in pursuance of this section, without the consent of the Treasury.
- (6) Without prejudice to the generality of section 198(2), any dividends or other sums received by the Secretary of State in right of or on the disposal of any securities acquired by virtue of this section shall be paid into the Consolidated Fund.

#### **Marginal Citations**

**M23** 1985 c. 6.

#### **136 Exercise of functions through nominees.**

- (1) The Secretary of State may, with the consent of the Treasury, appoint any person to act as his nominee, or one of his nominees, for the purposes of section 135; but any issue of securities to any such nominee in pursuance of that section shall be effected in accordance with such directions as may be given from time to time by the Secretary of State with the consent of the Treasury.
- (2) Any person holding any securities as a nominee of the Secretary of State by virtue of subsection (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Secretary of State may direct with the consent of the Treasury.

#### **137 Target investment limit for Government shareholding in nominated company.**

- (1) As soon as he considers it expedient, and in any case not later than six months after the nominated company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the aggregate of the shares for the time being held in the company, under or by virtue of any enactment, by any Minister of the Crown or any nominee of his (“the Government shareholding”).

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- (2) The target investment limit for the Government shareholding in the company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (“the ordinary voting rights”).
- (3) The first target investment limit fixed under this section for the Government shareholding in the company shall be equal to the proportion of the ordinary voting rights which is in fact carried by the Government shareholding in the company at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in the company in place of the one previously in force under this section; but—
  - (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of a Minister of the Crown so to exercise—
  - (a) any power to dispose of any shares held in the company under or by virtue of any enactment, and
  - (b) his power to give directions to any nominee of his,
 as to secure that the Government shareholding in the company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5), a Minister of the Crown may take up, or direct any nominee of his to take up, any rights for the time being available to him, or to the nominee, as an existing holder of shares or other securities of the company; but if, as a result, the proportion of the ordinary voting rights carried by the Government shareholding in the company at any time exceeds the target investment limit for the time being in force under this section, it shall be the duty of that Minister to comply with subsection (5) as soon after that time as is reasonably practicable.
- (7) References in this section to a Minister of the Crown include references to the Treasury; and for the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **138 Reserves of nominated company.**

- (1) If the Secretary of State so directs at any time before the nominated company ceases to be wholly owned by the Crown, such sums as may be specified in the direction shall, instead of being applied in any other way, be carried by the company to a reserve (“the statutory reserve”).
- (2) The statutory reserve may only be applied by the nominated company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2), the statutory reserve shall not count as an undistributable reserve of the nominated company for the purposes of subsection (3) (d) of section 264 of the <sup>M24</sup>Companies Act 1985 (restriction on distribution of assets); but, for the purpose of determining under that section whether the nominated company may make a distribution at any time, any amount for the time being standing to the

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credit of the statutory reserve shall be treated for the purposes of subsection (3)(c) of that section as if it were unrealised profits of the company.

**Marginal Citations**

M24 1985 c. 6.

**139 Loans by Secretary of State to nominated company.**

- (1) As from the transfer date the Secretary of State may, with the consent of the Treasury, make loans to the nominated company out of money provided by Parliament; but no loan shall be made by him under this section at a time when the company has ceased to be wholly owned by the Crown.
- (2) The aggregate amount outstanding in respect of the principal of loans made by the Secretary of State under this section shall not exceed the limit specified in subsection (3).
- (3) That limit is £20 million or such greater sum, not exceeding £100 million, as the Secretary of State may from time to time specify by order made with the consent of the Treasury.
- (4) Any loan made by the Secretary of State under this section shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.
- (5) An order shall not be made by the Secretary of State under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

**140 Temporary restriction on borrowings of nominated company.**

- (1) The aggregate amount outstanding in respect of the principal of any relevant borrowing of the nominated company shall not, at any time when the company is wholly owned by the Crown, exceed such sum as the Secretary of State may determine with the consent of the Treasury.
- (2) In subsection (1) “relevant borrowing”, in relation to the nominated company, means—
  - (a) loans made to that company or to any subsidiary of that company, other than—
    - (i) loans so made by any such subsidiary or (as the case may be) by that company, and
    - (ii) loans made to that company by the Secretary of State under section 139; and
  - (b) loans which are to be treated as having been made to that company, including loans which are to be treated as having been so made by virtue of the issue of debentures in pursuance of section 135.

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## General

### 141 Interpretation of Part IV.

(1) In this Part—

“the Commission” means the Independent Television Commission;

“debentures” includes debenture stock;

“the IBA” means the Independent Broadcasting Authority;

“the nominated company” means the company nominated for the purposes of section 127(1);

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“subsidiary” has the meaning given by section 736 of the <sup>M25</sup>Companies Act 1985;

“the transfer date” means the day appointed under section 127(1).

(2) Other expressions used in this Part which are also used in the <sup>M26</sup>Broadcasting Act 1981 have the same meaning as in that Act.

(3) The nominated company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when each of the issued shares in the company is held by, or by a nominee of, the Secretary of State.

#### Marginal Citations

**M25** 1985 c. 6.

**M26** 1981 c. 68.

## <sup>F117</sup>PART V

### THE BROADCASTING COMPLAINTS COMMISSION

#### Textual Amendments

**F117** Ss.142-150 repealed (1.4.1997) by 1996 c. 55, ss.148(2), 149(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**

#### Modifications etc. (not altering text)

**C60** Pt. V (ss. 142–150) modified by S.I. 1990/2579, **art. 2(2)**



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## <sup>F118</sup>PART VI

### THE BROADCASTING STANDARDS COUNCIL

#### Textual Amendments

**F118** Ss. 151-161 repealed (1.4.1997) by 1996 c. 55, ss. 148(2), 149(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**

## PART VII

### PROHIBITION ON INCLUSION OF OBSCENE AND OTHER MATERIAL IN PROGRAMME SERVICES

#### *Obscenity*

#### **162 Obscenity in programme services: England and Wales.**

- (1) In section 1 of the <sup>M27</sup>Obscene Publications Act 1959 (test of obscenity)—
- (a) the proviso to subsection (3) (exemption for television and sound broadcasting) shall cease to have effect; and
  - (b) the following subsections shall be added after that subsection—
    - “(4) For the purposes of this Act a person also publishes an article to the extent that any matter recorded on it is included by him in a programme included in a programme service.
    - (5) Where the inclusion of any matter in a programme so included would, if that matter were recorded matter, constitute the publication of an

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obscene article for the purposes of this Act by virtue of subsection (4) above, this Act shall have effect in relation to the inclusion of that matter in that programme as if it were recorded matter.

(6) In this section “programme” and “programme service” have the same meaning as in the Broadcasting Act 1990.”

(2) Schedule 15 to this Act shall have effect for the purpose of supplementing subsection (1) above.

**Marginal Citations**

**M27** 1959 c. 66.

**163 Obscenity in programme services: Scotland.**

(1) Section 51 of the <sup>M28</sup>Civic Government (Scotland) Act 1982 (offences of displaying, publishing, etc. of obscene material) shall be amended in accordance with the following provisions of this section.

(2) After subsection (2) there shall be inserted the following subsection—

“(2A) Subject to subsection (4) below, any person who—

(a) is responsible for the inclusion of any obscene material in a programme included in a programme service; or

(b) with a view to its eventual inclusion in a programme so included, makes, prints, has or keeps any obscene material,

shall be guilty of an offence under this section.”

(3) In subsection (6), paragraph (a) shall cease to have effect.

(4) In subsection (8)—

(a) in the definition of “material”, the words from “and” onwards shall be omitted;

(b) after the definition of “prescribed sum” there shall be inserted—

““programme” and “programme service” have the same meaning as in the Broadcasting Act 1990;” and

(c) the word “showing,” shall be omitted.

**Marginal Citations**

**M28** 1982 c. 45.

*Racially inflammatory material etc.*

**164 Inclusion in programme services in Great Britain of racially inflammatory material.**

(1) Part III of the <sup>M29</sup>Public Order Act 1986 (racial hatred) shall be amended as follows.

(2) In each of the following provisions, namely—

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- (a) section 18(6) (exemption from prohibition applying to use of threatening words etc.),
  - (b) section 20(3)(c) (exemption from prohibition applying to public performances of plays), and
  - (c) section 21(4) (exemption from prohibition applying to distribution etc. of recordings),
- for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”.
- (3) In section 22 (broadcasting or including programme in cable programme service)—
- (a) in subsections (1), (3)(b), (4)(a) and (5)(a), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “included in a programme service”; and
  - (b) the following provisions shall be omitted, namely—
    - (i) in subsection (2), the words “broadcasting or cable”,
    - (ii) in subsections (4)(b) and (5)(b), the words “broadcast or”, wherever occurring,
    - (iii) subsection (7) (exemption for programmes broadcast by BBC or Independent Broadcasting Authority), and
    - (iv) subsection (8) (application of certain provisions of the <sup>M30</sup>Cable and Broadcasting Act 1984).
- (4) In section 23 (possession of racially inflammatory material)—
- (a) in subsection (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “ or included in a programme service”;
  - (b) in subsection (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “ or inclusion in a programme service”; and
  - (c) subsection (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.
- (5) In section 29 (interpretation)—
- (a) the definitions of “broadcast” and “cable programme service” shall be omitted;
  - (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “ included in a programme service”; and
  - (c) the following definition shall be inserted after that definition—

““programme service” has the same meaning as in the Broadcasting Act 1990;”.

#### Marginal Citations

**M29** 1986 c. 64.

**M30** 1984 c. 46.

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## 165 Inclusion in programme services in Northern Ireland of material likely to stir up hatred etc.

- (1) Part III of the <sup>M31</sup>Public Order (Northern Ireland) Order 1987 (stirring up hatred or arousing fear) shall be amended as follows.
- (2) In each of the following provisions, namely—
  - (a) Article 9(5) (exemption from prohibition applying to use of threatening words etc.), and
  - (b) Article 11(4) (exemption from prohibition applying to distribution etc. of recordings),
 for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”.
- (3) In Article 12 (broadcasting or including programme in cable programme service)—
  - (a) in paragraphs (1), (3)(b), (4)(a) and (5)(a), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “included in a programme service”; and
  - (b) the following provisions shall be omitted—
    - (i) in paragraph (2)(a), the words “broadcasting or cable”,
    - (ii) in paragraphs (4)(b) and (5)(b), the words “broadcast or”, wherever occurring,
    - (iii) paragraph (7) (exemption for programmes broadcast by BBC or Independent Broadcasting Authority), and
    - (iv) paragraph (8) (application of certain provisions of <sup>M32</sup>Cable and Broadcasting Act 1984).
- (4) In Article 13 (possession of matter intended or likely to stir up hatred or arouse fear)—
  - (a) in paragraph (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “or included in a programme service”
  - (b) in paragraph (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “or inclusion in a programme service” and
  - (c) paragraph (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.
- (5) In Article 17 (interpretation)—
  - (a) the definitions of “broadcast” and “cable programme service” shall be omitted;
  - (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”; and
  - (c) the following definition shall be inserted after that definition—
 

““programme service” has the same meaning as in the Broadcasting Act 1990;”.

### Marginal Citations

**M31** S.I.1987/463 (N.I.7).

**M32** 1984 c. 46.

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## Defamation

### 166 Defamatory material.

- (1) For the purposes of the law of libel and slander (including the law of criminal libel so far as it relates to the publication of defamatory matter) the publication of words in the course of any programme included in a programme service shall be treated as publication in permanent form.
- (2) Subsection (1) above shall apply for the purposes of section 3 of each of the Defamation Acts (slander of title etc.) as it applies for the purposes of the law of libel and slander.
- (3) Section 7 of each of those Acts (qualified privilege of newspapers) shall apply in relation to—
  - (a) reports or matters included in a programme service, and
  - (b) any inclusion in such a service of any such report or matter,as it applies in relation to reports and matters published in a newspaper and to publication in a newspaper; and subsection (2) of that section shall have effect, in relation to any such inclusion, as if for the words “in the newspaper in which” there were substituted the words “in the programme service in which”.
- (4) In this section “the Defamation Acts” means the <sup>M33</sup>Defamation Act 1952 and the <sup>M34</sup>Defamation Act (Northern Ireland) 1955.
- (5) Subsections (1) and (2) above do not extend to Scotland.

#### Marginal Citations

**M33** 1952 c. 66.

**M34** 1955 c. 11 (N.I.).

## Supplementary

### 167 Power to make copies of recordings.

- (1) If a justice of the peace is satisfied by information on oath laid by a constable that there is reasonable ground for suspecting that a relevant offence has been committed by any person in respect of a programme included in a programme service, he may make an order authorising any constable to require that person—
  - (a) to produce to the constable a visual or sound recording of any matter included in that programme, if and so far as that person is able to do so; and
  - (b) on the production of such a recording, to afford the constable an opportunity of causing a copy of it to be made.
- (2) An order made under this section shall describe the programme to which it relates in a manner sufficient to enable that programme to be identified.
- (3) A person who without reasonable excuse fails to comply with any requirement of a constable made by virtue of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.

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- (4) No order shall be made under this section in respect of any recording in respect of which a warrant could be granted under any of the following provisions, namely—
- (a) section 3 of the <sup>M35</sup>Obscene Publications Act 1959;
  - (b) section 24 of the <sup>M36</sup>Public Order Act 1986; and
  - (c) Article 14 of the <sup>M37</sup>Public Order (Northern Ireland) Order 1987.
- (5) In the application of subsection (1) to England and Wales “relevant offence” means an offence under—
- (a) section 2 of the Obscene Publications Act 1959; or
  - (b) section 22 of the Public Order Act 1986.
- (6) In the application of subsection (1) to Scotland—
- (a) “relevant offence” means an offence under—
    - (i) section 51 of the <sup>M38</sup>Civic Government (Scotland) Act 1982, or
    - (ii) section 22 of the Public Order Act 1986;
  - (b) the reference to a justice of the peace shall include a reference to the sheriff; and
  - (c) for the reference to information on oath there shall be substituted a reference to evidence on oath.
- (7) In the application of subsection (1) to Northern Ireland—
- (a) “relevant offence” means an offence under Article 12 of the Public Order (Northern Ireland) Order 1987;
  - (b) for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate; and
  - (c) for the reference to information on oath laid by a constable there shall be substituted a reference to a complaint on oath made by a constable.

**Modifications etc. (not altering text)**

**C71** S. 167 amended (1.4.1997) by 1996 c. 55, s. 117 (with s. 43(1)(6)); S.I. 1997/1005, art. 4

**Marginal Citations**

**M35** 1959 c. 66.

**M36** 1986 c. 64.

**M37** S.I.1987/463 (N.I.7).

**M38** 1982 c. 45.

## PART VIII

### PROVISIONS RELATING TO WIRELESS TELEGRAPHY

**168 Offence of keeping wireless telegraphy station or apparatus available for unauthorised use.**

The following section shall be inserted after section 1 of the <sup>M39</sup>Wireless Telegraphy Act 1949 (in this Part referred to as “the 1949 Act”)—

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**“1A Offence of keeping wireless telegraphy station or apparatus available for unauthorised use.**

Any person who has any station for wireless telegraphy or apparatus for wireless telegraphy in his possession or under his control and either—

- (a) intends to use it in contravention of section 1 of this Act; or
- (b) knows, or has reasonable cause to believe, that another person intends to use it in contravention of that section,

shall be guilty of an offence.”

**Modifications etc. (not altering text)**

**C72** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**

**Marginal Citations**

**M39** 1949 c. 54.

**169 Offence of allowing premises to be used for purpose of unlawful broadcasting.**

The following section shall be inserted in the 1949 Act after the section 1A inserted by section 168 above—

**“1B Offence of allowing premises to be used for purpose of unlawful broadcasting.**

- (1) A person who is in charge of any premises which are used for making an unlawful broadcast, or for sending signals for the operation or control of any apparatus used for the purpose of making an unlawful broadcast from any other place, shall be guilty of an offence if—
  - (a) he knowingly causes or permits the premises to be so used; or
  - (b) having reasonable cause to believe that the premises are being so used, he fails to take such steps as are reasonable in the circumstances of the case to prevent the premises from being so used.
- (2) For the purposes of this section a person is in charge of any premises if he—
  - (a) is the owner or occupier of the premises; or
  - (b) has, or acts or assists in, the management or control of the premises.
- (3) For the purposes of this section a broadcast is unlawful if—
  - (a) it is made by means of the use of any station for wireless telegraphy or apparatus for wireless telegraphy in contravention of section 1 of this Act; or
  - (b) the making of the broadcast contravenes any provision of the Marine, &c., Broadcasting (Offences) Act 1967.
- (4) In this section—
  - “broadcast” has the same meaning as in the Marine, &c., Broadcasting (Offences) Act 1967;
  - “premises” includes any place and, in particular, includes—



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- (a) any vehicle, vessel or aircraft; and
- (b) any structure or other object (whether movable or otherwise and whether on land or otherwise).”

**Modifications etc. (not altering text)**

**C73** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**

**170 Prohibition of acts facilitating unauthorised broadcasting.**

The following section shall be inserted in the 1949 Act after the section 1B inserted by section 169 above—

**“1C Prohibition of acts facilitating unauthorised broadcasting.**

- (1) If a person—
  - (a) does any of the acts mentioned in subsection (2) in relation to a broadcasting station by which unauthorised broadcasts are made, and
  - (b) if any knowledge or belief or any circumstances is or are specified in relation to the act, does it with that knowledge or belief or in those circumstances,
 he shall be guilty of an offence.
- (2) The acts referred to in subsection (1) are—
  - (a) participating in the management, financing, operation or day-to-day running of the station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
  - (b) supplying, installing, repairing or maintaining any wireless telegraphy apparatus or any other item knowing, or having reasonable cause to believe, that the apparatus or other item is to be, or is, used for the purpose of facilitating the operation or day-to-day running of the station and that unauthorised broadcasts are made by the station;
  - (c) rendering any other service to any person knowing, or having reasonable cause to believe, that the rendering of that service to that person will facilitate the operation or day-to-day running of the station and that unauthorised broadcasts are so made;
  - (d) supplying a film or sound recording knowing, or having reasonable cause to believe, that an unauthorised broadcast of the film or recording is to be so made;
  - (e) making a literary, dramatic or musical work knowing, or having reasonable cause to believe, that an unauthorised broadcast of the work is to be so made;
  - (f) making an artistic work knowing, or having reasonable cause to believe, that an unauthorised broadcast including that work is to be so made;
  - (g) doing any of the following acts, namely—
    - (i) participating in an unauthorised broadcast made by the station, being actually present as an announcer, as a performer or one of the performers concerned in an entertainment given, or as the deliverer of a speech;



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- (ii) advertising, or inviting another to advertise, by means of an unauthorised broadcast made by the station; or
  - (iii) publishing the times or other details of any unauthorised broadcasts made by the station or (otherwise than by publishing such details) publishing an advertisement of matter calculated to promote the station (whether directly or indirectly),  
knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station.
- (3) In any proceedings against a person for an offence under this section consisting in the supplying of any thing or the rendering of any service, it shall be a defence for him to prove that he was obliged, under or by virtue of any enactment, to supply that thing or render that service.
- (4) If, by means of an unauthorised broadcast made by a broadcasting station, it is stated, suggested or implied that any entertainment of which a broadcast is so made has been supplied by, or given at the expense of, a person, then for the purposes of this section he shall, unless he proves that it was not so supplied or given, be deemed thereby to have advertised.
- (5) Section 46 of the Consumer Protection Act 1987 shall have effect for the purpose of construing references in this section to the supply of any thing as it has effect for the purpose of construing references in that Act to the supply of any goods.
- (6) In this section—  
“broadcast” has the same meaning as in the Marine, &c., Broadcasting (Offences) Act 1967;  
“broadcasting station” means any business or other operation (whether or not in the nature of a commercial venture) which is engaged in the making of broadcasts;  
“film”, “sound recording”, “literary, dramatic or musical work” and “artistic work” have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988;  
“speech” includes lecture, address and sermon; and  
“unauthorised broadcast” means a broadcast made by means of the use of a station for wireless telegraphy or wireless telegraphy apparatus in contravention of section 1 of this Act.”

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**Modifications etc. (not altering text)**

**C74** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064, art. 3\(2\)](#), [Sch. Pt.II](#)

## 171 Amendments of the Marine, &c., Broadcasting (Offences) Act 1967.

The <sup>M40</sup>Marine, &c., Broadcasting (Offences) Act 1967 shall have effect subject to the amendments specified in Schedule 16 (which include amendments that impose further restrictions on broadcasting at sea and on acts facilitating such broadcasting).

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**Modifications etc. (not altering text)**

**C75** Ss. 168-173 extended (with modifications) (1.6.1994) by **S.I. 1994/1064, art. 3(2), Sch. Pt. II**

**Marginal Citations**

**M40** 1967 c. 41.

**172 Amendments of provisions of 1949 Act relating to penalties and forfeiture.**

- (1) Section 14 of the 1949 Act (penalties and legal proceedings) shall be amended as follows.
- (2) In subsection (1), the following paragraphs shall be inserted before paragraph (a)—
  - “(aa) any offence under section 1(1) of this Act other than one falling within subsection (1A)(a) of this section;
  - (ab) any offence under section 1A of this Act other than one falling within subsection (1A)(aa) of this section;
  - (ac) any offence under section 1B or 1C of this Act;”.
- (3) In subsection (1A), the following paragraph shall be inserted after paragraph (a)—
  - “(aa) any offence under section 1A of this Act committed in relation to any wireless telegraphy apparatus not designed or adapted for emission (as opposed to reception);”.
- (4) The following subsections shall be substituted for subsection (3)—
  - “(3) Where a person is convicted of —
    - (a) an offence under this Act consisting in any contravention of any of the provisions of Part I of this Act in relation to any station for wireless telegraphy or any wireless telegraphy apparatus (including an offence under section 1B or 1C of this Act) or in the use of any apparatus for the purpose of interfering with any wireless telegraphy;
    - (b) any offence under section 12A of this Act;
    - (c) any offence under the Marine, &c., Broadcasting (Offences) Act 1967; or
    - (d) any offence under this Act which is an offence under section 7 of the Wireless Telegraphy Act 1967 (whether as originally enacted or as substituted by section 77 of the Telecommunications Act 1984),
 the court may, in addition to any other penalty, order such of the following things to be forfeited to the Secretary of State as the court considers appropriate, that is to say—
    - (i) any vehicle, vessel or aircraft, or any structure or other object, which was used in connection with the commission of the offence;
    - (ii) any wireless telegraphy apparatus or other apparatus in relation to which the offence was committed or which was used in connection with the commission of it;
    - (iii) any wireless telegraphy apparatus or other apparatus not falling within paragraph (ii) above which was, at the time of the commission of the offence, in the possession or under the control of the person convicted of the offence and was intended to be used (whether or not by that person)

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in connection with the making of any broadcast or other transmission that would contravene section 1 of this Act or any provision of the Marine, &c., Broadcasting (Offences) Act 1967.

(3AA) The power conferred by virtue of subsection (3)(a) above does not apply in a case where the offence is any such offence as is mentioned in subsection (1A) (a) or (aa) above.

(3AB) References in subsection (3)(ii) or (iii) above to apparatus other than wireless telegraphy apparatus include references to—

- (a) recordings;
- (b) equipment designed or adapted for use—
  - (i) in making recordings; or
  - (ii) in reproducing from recordings any sounds or visual images;and
- (c) equipment not falling within paragraphs (a) and (b) above but connected, directly or indirectly, to wireless telegraphy apparatus.”

(5) In subsection (3E), for the words from “(whether” to “provision” there shall be substituted “, shall be treated as an offence committed under the same provision, and at the same time, ”.

**Modifications etc. (not altering text)**

C76 Ss. 168-173 extended (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(2), Sch. Pt. II

**173 Extension of search and seizure powers in relation to unlawful broadcasting etc.**

(1) In subsection (1) of section 15 of the 1949 Act (entry and search of premises)—

- (a) after “Act” there shall be inserted “ or under the Marine, &c., Broadcasting (Offences) Act 1967 ”; and
- (b) the words “and named in the warrant,” shall be omitted.

(2) In subsection (2) of that section, the words “and named in the authorisation” shall be omitted.

(3) The following subsection shall be inserted after subsection (2) of that section—

“(2A) Without prejudice to any power exercisable by him apart from this subsection, a person authorised by the Secretary of State or (as the case may be) by the BBC to exercise any power conferred by this section may use reasonable force, if necessary, in the exercise of that power.”

(4) In subsection (1)(b) of section 79 of the <sup>M41</sup>Telecommunications Act 1984 (seizure of apparatus and other property used in committing certain offences connected with wireless telegraphy), the following paragraphs shall be inserted after “reception);”—

- “(ba) any offence under section 5(b) of that Act;
- (bb) any offence under the Marine, &c., Broadcasting (Offences) Act 1967;”.

(5) In subsection (2) of that section—

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- (a) for “the person or persons named in it” there shall be substituted “ any person authorised by the Secretary of State to exercise the power conferred by this subsection ”; and
  - (b) the words “or them” shall be omitted.
- (6) The following subsection shall be inserted after subsection (4) of that section—
- “(4A) Without prejudice to any power exercisable by him apart from this subsection, a person authorised by the Secretary of State to exercise any power conferred by this section may use reasonable force, if necessary, in the exercise of that power.”

**Modifications etc. (not altering text)**

C77 Ss. 168-173 extended (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(2), Sch. Pt. II

**Marginal Citations**

M41 1984 c. 12.

**174 Application of Part VIII to Isle of Man and Channel Islands.**

Section 20(3) of the 1949 Act and section 10 of the <sup>M42</sup>Marine, &c., Broadcasting (Offences) Act 1967 (power to extend provisions to the Isle of Man and Channel Islands) shall extend respectively to the provisions of this Part amending each of those Acts.

**Marginal Citations**

M42 1967 c. 41.

**PART IX**

COPYRIGHT AND RELATED MATTERS

**175 Use as of right of sound recordings in broadcasts and cable programme services.**

- (1) In Chapter VII of Part I of the <sup>M43</sup>Copyright, Designs and Patents Act 1988 (copyright licensing) there shall be inserted after section 135—

*“ Use as of right of sound recordings in broadcasts and cable programme services*

**135A Circumstances in which right available.**

- (1) Section 135C applies to the inclusion in a broadcast or cable programme service of any sound recordings if—
- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so,
  - (b) the condition in subsection (2) or (3) applies, and

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- (c) the person including those recordings in the broadcast or cable programme service has complied with section 135B.
- (2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence—
- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and
  - (b) allowing unlimited needletime or such needletime as he has demanded.
- (3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).
- (4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.
- (5) In the group of sections from this section to section 135G—
- “needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;
  - “sound recording” does not include a film sound track when accompanying a film.
- (6) In sections 135B to 135G, “terms of payment” means terms as to payment for including sound recordings in a broadcast or cable programme service.

### **135B Notice of intention to exercise right.**

- (1) A person intending to avail himself of the right conferred by section 135C must—
- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
  - (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.
- (2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).

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- (3) Before the person intending to avail himself of the right begins to exercise it, he must—
- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and
  - (b) apply to the Tribunal under section 135D to settle the terms of payment.

### **135C Conditions for exercise of right.**

- (1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who—
- (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings,
  - (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require, and
  - (c) makes the payments to the licensing body that are required by this section,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.

- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made—
- (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or
  - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).
- (4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

### **135D Applications to settle payments.**

- (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

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### **135E References etc. about conditions, information and other terms.**

- (1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal—
  - (a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or
  - (b) any question whether any information is information which the licensing body can reasonably require him to provide.
- (2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

### **135F Application for review of order.**

- (1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

### **135G Factors to be taken into account.**

- (1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall—
  - (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and
  - (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.
- (2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.

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- (3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.”
- (2) In section 149 of that Act (jurisdiction of the Copyright Tribunal), after paragraph (c) there shall be inserted—
- “(cc) section 135D or 135E (application or reference with respect to use as of right of sound recordings in broadcasts or cable programme services);”.
- (3) In section 179 of that Act (index of defined expressions)—
- (a) in the appropriate places in alphabetical order there shall be inserted—
- “needletime section 135A”, and
- “terms of payment section 135A”, and
- (b) in the entry for sound recordings, for “section 5” there shall be substituted “sections 5 and 135A ”.

**Marginal Citations**

**M43** 1988 c. 48.

**176 Duty to provide advance information about programmes.**

- (1) A person providing a programme service to which this section applies must make available in accordance with this section information relating to the programmes to be included in the service to any person (referred to in this section and Schedule 17 to this Act as “the publisher”) wishing to publish in the United Kingdom any such information.
- (2) The duty imposed by subsection (1) is to make available information as to the titles of the programmes which are to be, or may be, included in the service on any date, and the time of their inclusion, to any publisher who has asked the person providing the programme service to make such information available to him and reasonably requires it.
- (3) Information to be made available to a publisher under this section is to be made available as soon after it has been prepared as is reasonably practicable but, in any event—
- (a) not later than when it is made available to any other publisher, and
- (b) in the case of information in respect of all the programmes to be included in the service in any period of seven days, not later than the beginning of the preceding period of fourteen days, or such other number of days as may be prescribed by the Secretary of State by order.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The duty imposed by subsection (1) is not satisfied by providing the information on terms, other than terms as to copyright, prohibiting or restricting publication in the United Kingdom by the publisher.



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- (6) Schedule 17 applies to any information or future information which the person providing a programme service to which this section applies is or may be required to make available under this section.
- (7) For the purposes of this section and that Schedule, the following table shows the programme services to which the section and Schedule apply and the persons who provide them or are to be treated as providing them.

<b>Programme service</b>	<b>Provider of service</b>
<b><i>Services other than services under the Act</i></b>	
Television and national radio services provided by the BBC for reception in the United Kingdom	The BBC
<b><i>Services under the Act</i></b>	
Television programme services subject to regulation by the Independent Television Commission	The person licensed to provide the service
The television broadcasting service provided by the Welsh Authority [F119 and the service referred to in section 57(1A) (a)]	The Authority
Any national service (see section 84(2) (a)(i)) subject to regulation by the Radio Authority [F119, any simulcast radio service (within the meaning of Part II of the Broadcasting Act 1996), and any national digital sound programme service (within the meaning of that Part of that Act) subject to regulation by the Radio Authority]	The person licensed to provide the service
<b><i>Services provided during interim period only</i></b>	
Television broadcasting services provided by the Independent Television Commission in accordance with Schedule 11, other than Channel 4	The programme contractor
Channel 4, as so provided	The body corporate referred to in section 12(2) of the Broadcasting Act 1981

- (8) This section does not require any information to be given about any advertisement.

**Textual Amendments**

**F119** Words in s. 176, Table, inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 10** (with s. 43(1)(6)); S.I. 1996/2120, **art. 4 Sch. 1**

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## PART X

### MISCELLANEOUS AND GENERAL

#### *Foreign satellite services*

#### **177 Orders proscribing unacceptable foreign satellite services.**

- (1) Subject to the following provisions of this section, the Secretary of State may make an order proscribing a foreign satellite service for the purposes of section 178.
  - (2) If the Independent Television Commission or the Radio Authority consider that the quality of any relevant foreign satellite service which is brought to their attention is unacceptable and that the service should be the subject of an order under this section, they shall notify to the Secretary of State details of the service and their reasons why they consider such an order should be made.
  - (3) The Independent Television Commission or (as the case may be) the Radio Authority shall not consider a foreign satellite service to be unacceptable for the purposes of subsection (2) unless they are satisfied that there is repeatedly contained in programmes included in the service matter which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling.
  - (4) Where the Secretary of State has been notified under subsection (2), he shall not make an order under this section unless he is satisfied that the making of the order—
    - (a) is in the public interest; and
    - (b) is compatible with any international obligations of the United Kingdom.
  - (5) An order under this section—
    - (a) may make such provision for the purpose of identifying a particular foreign satellite service as the Secretary of State thinks fit; and
    - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F120</sup>(6) In this section and section 178—
- “foreign satellite service” means—
- (a) a service which is provided by a person who is not established in the United Kingdom and which consists wholly or mainly in the transmission by satellite of television programmes which are capable of being received in the United Kingdom, or
  - (b) a service which consists wholly or mainly in the transmission by satellite from a place outside the United Kingdom of sound programmes which are capable of being received in the United Kingdom;
- “relevant foreign satellite service” means—
- (a) in relation to the Independent Television Commission, a foreign satellite service falling within paragraph (a) of the definition above, and
  - (b) in relation to the Radio Authority, a foreign satellite service falling within paragraph (b) of that definition.]

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### Textual Amendments

**F120** S. 177(6) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, Sch. para. 13

## 178 Offence of supporting proscribed foreign satellite services.

- (1) This section applies to any foreign satellite service which is proscribed for the purposes of this section by virtue of an order under section 177; and references in this section to a proscribed service are references to any such service.
- (2) Any person who in the United Kingdom does any of the acts specified in subsection (3) shall be guilty of an offence.
- (3) Those acts are—
  - (a) supplying any equipment or other goods for use in connection with the operation or day-to-day running of a proscribed service;
  - (b) supplying, or offering to supply, programme material to be included in any programme transmitted in the provision of a proscribed service;
  - (c) arranging for, or inviting, any other person to supply programme material to be so included;
  - (d) advertising, by means of programmes transmitted in the provision of a proscribed service, goods supplied by him or services provided by him;
  - (e) publishing the times or other details of any programmes which are to be transmitted in the provision of a proscribed service or (otherwise than by publishing such details) publishing an advertisement of matter calculated to promote a proscribed service (whether directly or indirectly);
  - (f) supplying or offering to supply any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of programmes transmitted in the provision of a proscribed service.
- (4) In any proceedings against a person for an offence under this section, it is a defence for him to prove that he did not know, and had no reasonable cause to suspect, that the service in connection with which the act was done was a proscribed service.
- (5) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (6) For the purposes of this section a person exposing decoding equipment for supply or having such equipment in his possession for supply shall be deemed to offer to supply it.
- (7) Section 46 of the <sup>M44</sup>Consumer Protection Act 1987 shall have effect for the purpose of construing references in this section to the supply of any thing as it has effect for the purpose of construing references in that Act to the supply of any goods.
- (8) In this section “programme material” includes—
  - (a) a film (within the meaning of Part I of the <sup>M45</sup>Copyright, Designs and Patents Act 1988);
  - (b) any other recording; and

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- (c) any advertisement or other advertising material.

**Marginal Citations**

**M44** 1987 c. 43.

**M45** 1988 c. 48.

*Unauthorised decoders*

**179 Unauthorised decoders for encrypted services etc.**

- (1) In the Copyright, Designs and Patents Act 1988 the following section shall be inserted after section 297—

**“297A Unauthorised decoders.**

- (1) A person who makes, imports, sells or lets for hire any unauthorised decoder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (2) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for knowing, that the decoder was an unauthorised decoder.

- (3) In this section—

“apparatus” includes any device, component or electronic data;

“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

“transmission” means any programme included in a broadcasting or cable programme service which is provided from a place in the United Kingdom; and

“unauthorised”, in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in decoded form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part.”

- (2) In section 299 of the Act of 1988 (fraudulent reception of programmes broadcast from countries or territories outside the United Kingdom)—

- (a) subsection (2) shall cease to have effect; and  
 (b) in subsection (5), after “297” there shall be inserted “, 297A”.

*Television licensing*

**180 Transfer to BBC of functions connected with television licences.**

- (1) The <sup>M46</sup>Wireless Telegraphy Act 1949 (“the 1949 Act”) shall have effect subject to the amendments specified in Part I of Schedule 18 to this Act (by virtue of which functions

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of the Secretary of State as respects the issue and renewal of television licences are transferred to the BBC).

- (2) Section 3(3) of the <sup>M47</sup>Post Office Act 1969 (refunds in respect of wireless telegraphy licences) shall not apply to sums which, by virtue of subsection (1) above, are paid to the BBC under section 2(1) of the 1949 Act (fees and charges for licences); but refunds of sums so paid may be made by the BBC, out of sums received by them under section 2(1) of the 1949 Act, in such cases or classes of cases as they may determine.
- (3) Except so far as required for the making of refunds under subsection (2) above, sums received by the BBC under section 2(1) of the 1949 Act shall be paid into the Consolidated Fund.
- (4) Part I of the <sup>M48</sup>Wireless Telegraphy Act 1967 (obtaining of information as to sale and hire of television sets) shall have effect subject to the amendments specified in Part II of Schedule 18 to this Act (by virtue of which all of the functions of the Secretary of State under that Part of that Act, apart from his power to make regulations under section 2(7) or 6(1), are transferred to the BBC).

#### Marginal Citations

- M46** 1949 c. 54.  
**M47** 1969 c. 48.  
**M48** 1967 c. 72.

### 181 Certain apparatus to be deemed to be apparatus for wireless telegraphy.

- (1) Any apparatus which—
  - (a) is connected to the telecommunication system by means of which a relevant cable service is provided, and
  - (b) is so connected for the purpose of enabling any person to receive any programmes included in that service by means of the reception and immediate re-transmission of programmes included in a television broadcasting service,shall be deemed for the purposes of the 1949 Act to be apparatus for wireless telegraphy.
- (2) Any such apparatus shall, in addition, be deemed for the purposes of—
  - (a) section 1(7) of the 1949 Act (as amended by Part I of Schedule 18 to this Act), and
  - (b) any regulations made by the Secretary of State for the purposes of that provision under section 2 of that Act,to be television receiving apparatus.
- (3) In this section “relevant cable service” means a service provided by any person to the extent that it consists in the use of a telecommunication system (whether run by him or by any other person) for the purpose of the delivery, otherwise than by wireless telegraphy, of programmes included in one or more television broadcasting services, where such programmes are so delivered—
  - (a) for simultaneous reception at two or more places in the United Kingdom, or
  - (b) for reception at any place in the United Kingdom for the purpose of being presented there either to members of the public or to any group of persons.

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(4) In this section—

“the 1949 Act” means the <sup>M49</sup>Wireless Telegraphy Act 1949;

“connected” has the same meaning as in the <sup>M50</sup>Telecommunications Act 1984;

“television broadcasting service” means a television broadcasting service within the meaning of Part I of this Act, whether provided by the holder of a licence under that Part or by the BBC or the Welsh Authority or in accordance with Part II of Schedule 11 to this Act.

#### Marginal Citations

**M49** 1949 c. 54.

**M50** 1984 c. 12.

#### *Listed events*

<sup>F121</sup>182 .

#### Textual Amendments

**F121** S. 182 repealed (1.10.1996) by 1996 c. 55, ss. 105(2), 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

#### *Gaelic television programmes*

### 183 Financing of programmes in Gaelic out of Gaelic Television Fund.

(1) The Secretary of State—

- (a) may, for the financial year beginning with 1st April 1991, and
- (b) shall, for each subsequent financial year,

pay to the Commission such amount as he may, with the approval of the Treasury, determine to be appropriate for the purposes of this section.

(2) Any amount received by the Commission under subsection (1) shall be carried by them to the credit of a fund established by them under this section, to be known as the [<sup>F122</sup>Gaelic Broadcasting Fund] (and any such amount shall accordingly not be regarded as forming part of the revenues of the Commission).

(3) The Fund shall be under the management of a body established for the purposes of this section, which shall be called [<sup>F123</sup>Comataidh Craolaidh Gaidhlig (the Gaelic Broadcasting Committee)] and shall consist of—

- (a) a chairman appointed by the Commission; and
- (b) such number of other members appointed by the Commission, not being less than four nor more than eight, as they may from time to time determine.

[<sup>F124</sup>(3A) Before making any appointment under subsection (3) the Commission shall consult the Radio Authority.]

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- (4) The Fund may be applied by the Committee—
- (a) in the making of grants for the following purposes, namely—
    - (i) financing the making of television [<sup>F125</sup>and sound] programmes in Gaelic primarily with a view to the broadcasting of such programmes for reception in Scotland;
    - (ii) financing the training of persons employed or to be employed in connection with the making of such programmes; and
    - (iii) other purposes connected with or related to the making of such programmes; and
  - (b) in financing the undertaking of research into the types of television [<sup>F125</sup>and sound] programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast.
- (5) When making any grant out of the Fund in pursuance of subsection (4) the Committee may impose such conditions as they think fit, including conditions requiring the grant to be repaid in specified circumstances.
- (6) The Committee shall perform their functions under this section with respect to the making of grants out of the Fund in such manner as they consider will [<sup>F126</sup>—
- (a) secure that a wide range of high quality television programmes in Gaelic are broadcast for reception in Scotland;
  - [<sup>F127</sup>(b) widen the range and improve the quality of sound programmes in Gaelic that are broadcast for reception in Scotland;
- but] nothing in this section shall be construed as authorising programmes to be commissioned by the Committee.
- (7) The Commission shall so exercise their power under subsection (3) to appoint the members of the Committee as to secure that a majority of the members are persons who appear to them to represent the Gaelic-speaking community; and Schedule 19 to this Act shall have effect with respect to the Committee.
- (8) Any sums required by the Secretary of State under subsection (1) shall be paid out of money provided by Parliament.
- (9) In this section, section 184 and Schedule 19—
- “the Commission” means the Independent Television Commission;
  - “the Committee” means the body established under subsection (3) above;
  - “Gaelic” means the Gaelic language as spoken in Scotland; and
  - “for reception in Scotland” means for reception wholly or mainly in Scotland.

#### Textual Amendments

**F122** Words in s. 183(2) substituted (1.4.1997) by 1996 c. 55, s. 95(2); S.I. 1997/1005, art. 4

**F123** Words in s. 183(3) substituted (1.4.1997) by 1996 c. 55, s. 95(3); S.I. 1997/1005, art. 4

**F124** S. 183(3A) inserted (1.4.1997) by 1996 c. 55, s. 95(4); S.I. 1997/1005, art. 4

**F125** Words in s. 183(4)(a)(i) and (b) inserted (1.4.1997) by 1996 c. 55, s. 95(5); S.I. 1997/1005, art. 4

**F126** Words in s. 183(6) renumbered (1.4.1997) as s. 183(6)(a) by 1996 c. 55, s. 95(6)(a); S.I. 1997/1005, art. 4

**F127** S. 183(6)(b) and word substituted for the word “but”(1.4.1997) by 1996 c. 55, s. 95(6)(b); S.I. 1997/1005, art. 4



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**Modifications etc. (not altering text)**

**C78** S. 183: transfer of functions to the Scottish Ministers (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 2, [Sch. 1](#); [S.I. 1998/3178](#)

**184 Broadcasting of programmes in Gaelic on Channel 3 in Scotland.**

- (1) Section 16 shall have effect in relation to any service to which this section applies as if the following requirements were included among those specified in subsection (2) of that section, namely—
  - (a) that a suitable proportion of the programmes included in the service are programmes in Gaelic other than funded Gaelic productions;
  - (b) that the service includes funded Gaelic productions of which—
    - (i) a suitable proportion are of high quality, and
    - (ii) a suitable proportion are shown at peak viewing times; and
  - (c) that (taking the programmes included in the service in accordance with paragraphs (a) and (b) above as a whole) the service includes a wide range of programmes in Gaelic.
- (2) In subsection (1) above “funded Gaelic productions” means programmes in Gaelic the making of which has been wholly or partly financed out of grants made in pursuance of section 183(4) to the person providing the service.
- (3) The conditions which are, by virtue of section 33(1), to be included in a licence to provide a service to which this section applies accordingly include conditions imposed for the purpose of securing that the requirements specified in paragraphs (a) to (c) of subsection (1) above are complied with in relation to the service.
- (4) This section applies—
  - (a) to any regional Channel 3 service that is to be provided for an area the whole of which is in Scotland; and
  - (b) if the Commission determine that it shall so apply, to any regional Channel 3 service that is to be provided for an area the greater part of which is in Scotland.
- (5) In this section “licence” and “regional Channel 3 service” have the same meaning as in Part I of this Act; and subsection (9) of section 183 applies for the purposes of this section.

*National television archive*

**185 Contributions towards maintenance of national television archive.**

- (1) The Commission shall, for the financial year which includes the commencement of this section and each subsequent financial year, determine an aggregate amount which they consider it would be appropriate for the holders of Channel 3 and Channel 5 licences to contribute, in accordance with this section, towards the expenses incurred by the nominated body in connection with the maintenance by it of a national television archive.
- (2) In this section “the nominated body” means such body as may for the time being be nominated by the Commission for the purposes of this section, being a body which—



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- (a) is for the time being a designated body for the purposes of section 75 of the <sup>M51</sup>Copyright, Designs and Patents Act 1988 (recordings for archival purposes), and
  - (b) appears to the Commission to be in a position to maintain a national television archive.
- (3) A Channel 3 or Channel 5 licence shall include conditions requiring the licence holder to pay to the Commission, in respect of each of the financial years mentioned in subsection (1), such amount as they may notify to him for the purposes of this section, being such proportion of the aggregate amount determined for that year under that subsection as they consider appropriate (and different proportions may be determined in relation to different persons).
- (4) Any amount received by the Commission by virtue of subsection (3) shall be transmitted by them to the nominated body.
- (5) In this section—  
“the Commission” means the Independent Television Commission; and  
“Channel 3 licence” and “Channel 5 licence” have the same meaning as in Part I of this Act.

**Marginal Citations**

**M51** 1988 c. 48.

*Duties of BBC as respects independent productions*

**186 Duty of BBC to include independent productions in their television services.**

- (1) It shall be the duty of the BBC to secure that, in each relevant period, not less than the prescribed percentage of the total amount of time allocated to the broadcasting of qualifying programmes in the television broadcasting services provided by them is allocated to the broadcasting of a range and diversity of independent productions.
- (2) In subsection (1)—
- (a) “qualifying programmes” and “independent productions” have the same meaning as in section 16(2)(h), and “the prescribed percentage” means the percentage for the time being specified in section 16(2)(h); and
  - (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved;
- and before making an order under section 16(5) or (6) the Secretary of State shall (in addition to consulting the Independent Television Commission in accordance with section 16(7)) consult the BBC.
- (3) The Director General of Fair Trading (“the Director”) shall, in respect of each relevant period, make a report to the Secretary of State on the extent to which the BBC have, in his opinion, performed their duty under subsection (1) above in that period.
- (4) A report made by the Director under subsection (3) may contain, in addition to his conclusions as to the extent to which the BBC have performed that duty in the period in question—

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- (a) such an account of his reasons for those conclusions as is, in his opinion, expedient for facilitating a proper understanding of those conclusions; and
  - (b) his observations, in the light of those conclusions and his reasons for them, with regard to—
    - (i) competition in connection with the production of television programmes for broadcasting by the BBC, or
    - (ii) matters appearing to him to arise out of, or to be conducive to, such competition.
- (5) The Director may at any time make a report to the Secretary of State on any matter related to or connected with the performance by the BBC of their duty under subsection (1); and any such report may include observations by the Director on any matter falling within subsection (4)(b)(i) or (ii) and pertinent to the subject-matter of the report.
- (6) The Director shall publish any report made by him under this section in such manner as he considers appropriate; and where he makes any report under this section he shall have regard to the need for excluding from the report, so far as it is practicable to do so—
- (a) any matter which relates to the private affairs of an individual, where in the opinion of the Director the publication of that matter would or might seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a body of persons (whether corporate or unincorporate), where in the opinion of the Director—
    - (i) publication of that matter would or might seriously and prejudicially affect the interests of that body, and
    - (ii) it is not necessary for the purposes of the report to include that matter as matter specifically relating to that body.
- (7) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of the Director under this section.
- (8) In any proceedings relating to the performance by the BBC of their duty under subsection (1), any report made by the Director under subsection (3)—
- (a) shall be evidence of any facts stated in the report, and
  - (b) so far as it consists of any such conclusions as are mentioned in subsection (4), shall be evidence of the extent to which the BBC have performed that duty in the relevant period in question;
- and any document purporting to be a copy of any such report shall be received in evidence and shall be deemed to be such a copy unless the contrary is shown.
- (9) The following periods are relevant periods for the purposes of this section, namely—
- (a) the period beginning with 1st January 1993 and ending with 31st March 1994;
  - (b) the financial year beginning with 1st April 1994; and
  - (c) each subsequent financial year.

## **187 Information to be furnished by BBC for purposes of reports under section 186.**

- (1) The Director may serve on the BBC a notice requiring them, at a time and place specified in the notice—
- (a) to produce to him such documents specified or described in the notice (being documents in the custody or under the control of the BBC), or

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- (b) to furnish him, in a form specified in the notice, with such estimates, returns or other information specified or described in it, as he may require for the purpose of making any report under section 186.
- (2) The BBC shall not by virtue of subsection (1) be compelled—
  - (a) to produce any document which they could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session, or
  - (b) in complying with any requirement for the furnishing of information, to give any information which they could not be compelled to give in evidence in such proceedings.
- (3) In this section “the Director” means the Director General of Fair Trading.

*Power to give directions relating to international obligations*

**188 Power to give broadcasting bodies etc. directions relating to international obligations.**

- (1) A body to which this section applies shall carry out any functions which the Secretary of State may by order direct them to carry out for the purpose of enabling Her Majesty’s Government in the United Kingdom to give effect to any international obligations of the United Kingdom.
- (2) This section applies to—
  - (a) the BBC;
  - (b) the Independent Television Commission;
  - (c) the Welsh Authority;
  - (d) the Radio Authority; and
  - (e) the <sup>F128</sup>Broadcasting Standards Commission]
- (3) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F128** Words in S. 188(2)(e) substituted (1.4.1997) by 1996 c. 55, s. 148(1), Sch. 10 Pt. II para. 20; S.I. 1997/1005, art. 4

*Matters relating to telecommunication systems*

**189 Sharing of apparatus by operators of telecommunication systems.**

- (1) Where—
  - (a) the telecommunications code contained in Schedule 2 to the 1984 Act expressly or impliedly imposes any limitation on the use to which any telecommunication apparatus installed by a person (“the operator”) may be put, and
  - (b) the operator is a party to a relevant agreement,

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that limitation shall not have effect so as to preclude the doing of anything which is done in relation to that apparatus in pursuance of that agreement; and anything which is so done shall be disregarded in determining, for the purposes of the telecommunications code as it applies in relation to the operator, the purposes for which that apparatus is used.

- (2) In this section “relevant agreement”, in relation to any telecommunication apparatus, means an agreement in writing—
- (a) to which the parties are either—
    - (i) two or more persons to whom this section applies, or
    - (ii) one or more persons to whom this section applies and one or more telecommunications operators who are not such persons; and
  - (b) which relates to the sharing by those persons of the use of that apparatus.
- (3) Subsection (1) shall not be construed, in relation to a person who is authorised by a relevant agreement to share the use of any apparatus installed by another party to the agreement, as affecting any requirement on him (whether imposed by any statutory provision or otherwise) to obtain any consent or permission in connection with the installation by him of any apparatus, or the doing by him of any other thing, in pursuance of the agreement.
- (4) This section applies to—
- (a) the holder of a licence to provide a local delivery service within the meaning of Part II of this Act;
  - (b) the holder of any licence to provide a prescribed diffusion service continued in force by, or granted under, Part II of Schedule 12 to this Act;
  - (c) a telecommunications operator in his capacity as a person providing the means of delivery for the service provided under his licence by a person falling within paragraph (a) or (b) above; and
  - (d) the company nominated for the purposes of section 127(1).
- (5) In this section—
- “the 1984 Act” means the <sup>M52</sup>Telecommunications Act 1984;
- “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment;
- “telecommunication apparatus” has the same meaning as in Schedule 2 to the 1984 Act;
- “telecommunications operator” means a person who runs a telecommunication system the running of which is, or is not required to be, licensed under Part II of the 1984 Act.

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**Marginal Citations**

**M52** 1984 c. 12.

**190 Modification of certain references in Telecom- munications Act licences.**

- (1) This section applies to licences which have been granted under section 7 of the Telecommunications Act 1984 (licensing of telecommunication systems) before the transfer date and continue in force on or after that date.

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- (2) In any licence to which this section applies, any reference (however expressed) to a cable programme service sent under a licence granted under section 4 of the Cable Act shall be construed, as from the transfer date, as a reference to a licensable service within the meaning of Part I of that Act (other than an exempt service), whether sent—
- (a) under a diffusion licence which is continued in force by, or granted under, Part II of Schedule 12 to this Act, or
  - (b) under a local delivery licence granted under this Act, or otherwise.
- (3) Where any licence to which this section applies (“the telecommunications licence”) authorises the Secretary of State to revoke that licence in the event of the revocation of a licence granted under section 4 of the Cable Act in respect of the licensed systems (“the cable licence”), he may similarly revoke the telecommunications licence in the event of the revocation of any licence granted in respect of the licensed systems, in succession to the cable licence, under or in pursuance of any of paragraphs 2 to 4 in Part II of Schedule 12 to this Act.
- (4) Where any licence to which this section applies (“the telecommunications licence”) provides for that licence to remain in force so long as there remains in force in respect of the licensed systems a licence granted under section 4 of the Cable Act (“the cable licence”), then if a local delivery licence is granted in respect of the licensed system, in succession to the cable licence, in pursuance of paragraph 6 in Part II of Schedule 12 to this Act, the telecommunications licence shall (subject to the terms contained in it) remain in force so long as that local delivery licence remains in force.
- (5) In this section—
- “the Cable Act” means the <sup>M53</sup>Cable and Broadcasting Act 1984;
  - “diffusion licence” means a licence to provide a prescribed diffusion service or other diffusion service within the meaning of Part I of the Cable Act;
  - “exempt service” means a service falling within any description of services exempted from licensing under Part I of the Cable Act by virtue of an order in force under section 3 of that Act immediately before the transfer date;
  - “the licensed systems”, in relation to a licence to which this section applies, means the telecommunication systems the running of which is authorised by the licence;
  - “local delivery licence” has the same meaning as in Part II of this Act;
  - “the transfer date” means the day appointed under section 127(1);
- and any reference to a licence granted under section 4 of the Cable Act includes, in relation to a licence to which this section applies (“the relevant licence”), a reference to a licence granted under section 58 of the <sup>M54</sup>Telecommunications Act 1984 (whether described in the relevant licence in those terms or in any other way).

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**Marginal Citations**

**M53** 1984 c. 46.

**M54** 1984 c. 12.

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## **191 Revocation of class licence to run broadcast relay systems.**

The licence entitled “Class Licence to run Broadcast Relay Systems”, which was granted by the Secretary of State on 25th November 1986 under section 7 of the Telecommunications Act 1984, is hereby revoked.

### *Application of competition legislation*

## **192 Application of provisions of Fair Trading Act 1973 to broadcasting and telecommunication services.**

- (1) In section 137(3) of the <sup>M55</sup>Fair Trading Act 1973 (definition of “supply of services”), there shall be inserted after paragraph (e) “and
  - (f) includes the making of arrangements, by means of such an agreement as is mentioned in section 189(2) of the Broadcasting Act 1990, for the sharing of the use of any telecommunication apparatus (within the meaning of Schedule 2 to the Telecommunications Act 1984).”
- (2) It is hereby declared for the avoidance of doubt that the provision of a broadcasting service is not a service falling within paragraph 7 of Schedule 5 to the Fair Trading Act 1973 (restriction on making references under section 14, 50 or 51 of the Act in connection with telecommunication services) by reason of the fact that the broadcasting service is provided by means of the running of any such system as is mentioned in that paragraph.
- (3) In subsection (2) “broadcasting service” means—
  - (a) a programme service; or
  - (b) a local delivery service (within the meaning of Part II of this Act).
- (4) In Part I of Schedule 7 to the <sup>M56</sup>Fair Trading Act 1973, paragraphs 8 and 9 (provision of programmes for transmission by Independent Broadcasting Authority, or of licensed cable programme services, wholly excluded from references under section 50 or 51 of the Act) shall cease to have effect.

### **Marginal Citations**

**M55** 1973 c. 41.

**M56** 1973 c. 41.

## **193 Modification of networking arrangements in consequence of reports under competition legislation.**

- (1) The Secretary of State may, in any of the circumstances in which this subsection has effect, by order provide for any networking arrangements specified in the order to have effect with such modifications as appear to him to be appropriate.
- (2) Subsection (1) shall have effect in the following circumstances, namely—
  - (a) where the circumstances are as mentioned in section 56(1) of the Fair Trading Act 1973 (order on report on monopoly reference) and the monopoly situation exists in connection with the provision of programmes for broadcasting in regional Channel 3 services;

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- (b) where the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and one or more of the enterprises which ceased to be distinct enterprises was engaged in the provision of such programmes; and
  - (c) where the circumstances are as mentioned in section 10(1) of the <sup>M57</sup>Competition Act 1980 (order on report on competition reference) and the anti-competitive practice was pursued in connection with the provision of such programmes.
- (3) An order under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section—  
“networking arrangements” means any such arrangements as are mentioned in section 39(1) above;  
“regional Channel 3 service” has the meaning given by section 14(6) above;  
and any expression used in this section which is also used in the Fair Trading Act 1973 or the Competition Act 1980 has the same meaning as in that Act.

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**Marginal Citations**

**M57** 1980 c. 21.

**194 Restrictive Trade Practices Act 1976 not to apply to networking arrangements.**

- (1) The <sup>M58</sup>Restrictive Trade Practices Act 1976 shall not apply, and shall be deemed never to have applied, to any relevant networking arrangements which are specified, or are of a description specified, in an order made by the Secretary of State (whether before or after the making of those arrangements) and which satisfy such conditions as may be so specified.
- (2) In subsection (1) “relevant networking arrangements” means—  
(a) any arrangements entered into as mentioned in section 39(4) or (7)(b) above, or  
(b) any agreement not falling within paragraph (a) but made for the purpose mentioned in section 39(1) above.
- (3) Before making an order under subsection (1) the Secretary of State shall consult the Independent Television Commission and the Director General of Fair Trading; and such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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**Marginal Citations**

**M58** 1976 c. 34.

**[<sup>F129</sup>194A] Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.**

- (1) In this section a “relevant agreement” means an agreement—



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- (a) which is made between all holders of regional Channel 3 licences for securing the appointment by them, in accordance with conditions included in their licences by virtue of section 31A(a), of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
  - (b) which is made between them and the body corporate appointed to be the appointed news provider for the purposes of section 31(2) for purposes connected with the appointment.
- (2) If a relevant agreement is registered under the <sup>M59</sup>Restrictive Trade Practices Act 1976 (“the 1976 Act”), the Director General of Fair Trading shall report to the Secretary of State as to whether it appears to the Director that the agreement falls within subsection (4).
- (3) If, on receiving a report under subsection (2), it appears to the Secretary of State that the agreement falls within subsection (4), he may give a direction to the Director requiring him not to make an application to the Restrictive Practices Court under Part I of the 1976 Act in respect of the relevant agreement.
- (4) A relevant agreement falls within this subsection if—
- (a) those provisions of the agreement by virtue of which the 1976 Act applies to the agreement do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, or
  - (b) all or any of those provisions have, or are intended or likely to have, that effect to a significant extent, but that the effect is not greater than is necessary—
    - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
    - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).
- (5) The Secretary of State may vary or revoke any direction given under subsection (3) above if he is satisfied that there has been a material change of circumstances such that—
- (a) the grounds for the direction have ceased to exist, or
  - (b) there are grounds for giving a different direction;
- and where the Secretary of State so varies or revokes any direction, he shall give notice of the variation or revocation to the Director.
- (6) In this section—
- (a) “agreement” and “Director” have the same meaning as in the 1976 Act, and
  - (b) “regional Channel 3 licence” has the same meaning as in Part I.]

#### Textual Amendments

**F129** Shoulder heading and s. 194A inserted (24.7.1996) by 1996 c. 55, s. 77(1)(2) (with s. 43(1)(6))

#### Marginal Citations

**M59** 1976 c. 34.



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## General

### 195 Offences by bodies corporate.

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### 196 Entry and search of premises.

- (1) If a justice of the peace is satisfied by information on oath—
  - (a) that there is reasonable ground for suspecting that an offence under section 13, 82 or 97 has been or is being committed on any premises specified in the information, and
  - (b) that evidence of the commission of the offence is to be found on those premises,he may grant a search warrant conferring power on any person or persons authorised in that behalf by the relevant authority to enter and search the premises specified in the information at any time within one month from the date of the warrant.
- (2) In subsection (1) “the relevant authority”—
  - (a) in relation to an offence under section 13 or 82, means the Independent Television Commission; and
  - (b) in relation to an offence under section 97, means the Radio Authority.
- (3) A person who intentionally obstructs a person in the exercise of powers conferred on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (4) A person who discloses, otherwise than for the purposes of any legal proceedings or of a report of any such proceedings, any information obtained by means of an exercise of powers conferred by this section shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (5) In the application of this section to Scotland, for the reference to a justice of the peace there shall be substituted a reference to the sheriff and for any reference to information on oath there shall be substituted a reference to evidence on oath.
- (6) In the application of this section to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate and for any reference to information on oath there shall be substituted a reference to a complaint on oath.

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## 197 Restriction on disclosure of information.

- (1) Subject to subsections (2) to (4), no information with respect to any particular business which has been obtained under or by virtue of this Act shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.
- (2) Subsection (1) does not apply to any disclosure of information which is made—
  - (a) for the purpose of facilitating the performance of—
    - (i) any functions of the Independent Television Commission, the Welsh Authority or the Radio Authority under this Act or the 1988 Regulations, or
    - (ii) any functions of the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission under the <sup>M60</sup>Fair Trading Act 1973 (excluding Parts II, III and XI of that Act), the <sup>M61</sup>Restrictive Trade Practices Act 1976, the <sup>M62</sup>Competition Act 1980 or this Act or the 1988 Regulations;
  - (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings or a report of any such proceedings;
  - (c) for the purposes of any civil proceedings brought under or by virtue of the Fair Trading Act 1973 (excluding Part III), the Restrictive Trade Practices Act 1976 or this Act or the 1988 Regulations, or for the purposes of a report of any such proceedings; or
  - (d) in pursuance of any Community obligation.
- (3) Nothing in subsection (1) shall be construed—
  - (a) as limiting the matters which may be included in, or be made public as part of, a report under section 186 above or under Schedule 4 to this Act, or
  - (b) as applying to any information which has been made public as part of such a report.
- (4) Subsection (1) does not apply to any information obtained as mentioned in section 196(4) above.
- (5) The following provisions, namely—
  - (a) section 133(1) of the Fair Trading Act 1973,
  - (b) section 41(1) of the Restrictive Trade Practices Act 1976, and
  - (c) section 19(1) of the Competition Act 1980,
 shall not apply to any disclosure of information which is made for the purpose of facilitating the performance of any functions of the Independent Television Commission, the Welsh Authority or the Radio Authority under this Act or the 1988 Regulations.
- (6) Any person who discloses any information in contravention of subsection (1) shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (7) In this section “the 1988 Regulations” means the <sup>M63</sup>Control of Misleading Advertisements Regulations 1988.

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#### Marginal Citations

**M60** 1973 c. 41.

**M61** 1976 c. 34.

**M62** 1980 c. 21.

**M63** S.I. 1988/915.

### 198 Financial provisions.

- (1) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

### 199 Notices.

- (1) Subsections (2) to (4) below have effect in relation to any notice required or authorised by or under this Act to be served on or given to any person other than the Secretary of State.
- (2) Any such notice shall be in writing and may be served on or given to the person in question—
  - (a) by delivering it to him,
  - (b) by leaving it at his proper address, or
  - (c) by sending it by post to him at that address.
- (3) Any such notice may—
  - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
  - (b) in the case of a partnership, be served on or given to any partner or any person having the control or management of the partnership business;
  - (c) in the case of an unincorporated association other than a partnership, be served on or given to any member of the governing body of the association.
- (4) For the purposes of this section and section 7 of the <sup>M64</sup>Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom a notice is to be served or given shall be his last known address, except that—
  - (a) where it is to be served on or given to a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body; and
  - (b) where it is to be served on or given to a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;and, in relation to a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom, the reference in paragraph (a) or (b) to its principal office includes a reference to its principal office within the United Kingdom (if any).

- (5) Any notice served—
  - (a) by the Independent Television Commission under section 21, 41, 42 or 55, or

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(b) by the Radio Authority under section 103, 109, 110, 111, or 120, shall be published in such manner as that body consider appropriate, and shall be so published as soon as reasonably practicable after it is served.

(6) In this section (except in subsection (5)) “notice” includes any notification.

#### Marginal Citations

**M64** 1978 c. 30.

## 200 Regulations and orders.

- (1) Any power of the Secretary of State to make regulations or an order under this Act shall be exercisable by statutory instrument.
- (2) Any regulations or order made by the Secretary of State under this Act may make—
  - (a) different provision for different cases; and
  - (b) such supplemental, incidental, consequential or transitional provision or savings as the Secretary of State considers appropriate.

## 201 Programme services.

- (1) In this Act “programme service” means any of the following services (whether or not it is, or it requires to be, licensed under this Act), namely—
  - (a) any television broadcasting service or other television programme service (within the meaning of Part I of this Act);
  - (b) any sound broadcasting service or licensable sound programme service (within the meaning of Part III of this Act);
  - <sup>[F130]</sup>(bb) any digital sound programme service (within the meaning of Part II of the Broadcasting Act 1996)]
  - (c) any other service which consists in the sending, by means of a telecommunication system, of sounds or visual images or both either—
    - (i) for reception at two or more places in the United Kingdom (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or
    - (ii) for reception at a place in the United Kingdom for the purpose of being presented there to members of the public or to any group of persons.
- (2) Subsection (1)(c) does not apply to—
  - (a) a local delivery service (within the meaning of Part II of this Act);
  - (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the <sup>M65</sup>Telecommunications Act 1984; or
  - (c) a two-way service (as defined by section 46(2)(c)).

#### Textual Amendments

**F130** S. 201(1)(bb) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 11** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

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### Marginal Citations

M65 1984 c. 12.

## 202 General interpretation.

- (1) In this Act (unless the context otherwise requires)—
- “advertising agent” shall be construed in accordance with subsection (7);
  - “the BBC” means the British Broadcasting Corporation;
  - [<sup>F131</sup>“a BBC company” means—
    - (a) any body corporate which is controlled by the BBC, or
    - (b) any body corporate in which the BBC or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]“body”, without more, means a body of persons whether incorporated or not, and includes a partnership;
  - “broadcast” means broadcast by wireless telegraphy;
  - [<sup>F132</sup>“a Channel 4 company” means—
    - (a) any body corporate which is controlled by the Channel Four Television Corporation, or
    - (b) any body corporate in which the Corporation or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]“connected”, in relation to any [<sup>F133</sup>person], shall be construed in accordance with paragraph 3 in Part I of Schedule 2;
  - “control”, in relation to a body, has the meaning given by paragraph 1(1) in that Part of that Schedule;
  - “dwelling-house” includes a hotel, inn, boarding-house or other similar establishment;
  - [<sup>F134</sup>“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;
  - “EEA State” means a State which is a contracting party to the EEA Agreement;]
  - “financial year” shall be construed in accordance with subsection (2);
  - “frequency” includes frequency band;
  - “modifications” includes additions, alterations and omissions;
  - “pension scheme” means a scheme for the payment of pensions, allowances or gratuities;
  - “programme” includes an advertisement and, in relation to any service, includes any item included in that service;
  - [<sup>F135</sup>“an S4C company” means—
    - (a) any body corporate which is controlled by the Welsh Authority, or
    - (b) any body corporate in which the Welsh Authority or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]“telecommunication system” has the same meaning as in the
- <sup>M66</sup>Telecommunications Act 1984;

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“the Welsh Authority” means the authority renamed Sianel Pedwar Cymru by section 56(1);

“wireless telegraphy” and “station for wireless telegraphy” have the same meaning as in the <sup>M67</sup>Wireless Telegraphy Act 1949.

(2) In any provision of—

- (a) <sup>F136</sup> . . .
- (b) Schedule 1, 2, 3, 6, 8, <sup>F137</sup> . . . or 19,

“financial year” means a financial year of the body with which that provision is concerned; and in any other provision of this Act “financial year” means the twelve months ending with 31st March.

(3) In this Act—

- (a) references to pensions, allowances or gratuities include references to like benefits to be given on death or retirement; and
- (b) any reference to the payment of pensions, allowances or gratuities to or in respect of any persons includes a reference to the making of payments towards provision for the payment of pensions, allowances or gratuities to or in respect of those persons.

(4) Any reference in this Act (however expressed) to a licence under this Act being in force is a reference to its being in force so as to authorise the provision under the licence of the licensed service; and any such reference shall accordingly not be construed as prejudicing the operation of any provisions of such a licence which are intended to have effect otherwise than at a time when the licensed service is authorised to be so provided.

(5) It is hereby declared that, for the purpose of determining for the purposes of any provision of this Act whether a service is—

- (a) for general reception, or capable of being received, within the United Kingdom or elsewhere, or
- (b) for reception at any place or places, or in any area, in the United Kingdom, the fact that the service has been encrypted to any extent shall be disregarded.

[<sup>F138</sup>(5A) For the purposes of this Act a person is not to be regarded at any time as being established both in the United Kingdom and in another EEA State.]

(6) Any reference in this Act, in relation to a service consisting of programmes transmitted by satellite—

- (a) to a person by whom the programmes are transmitted, or
- (b) to a place from which the programmes are transmitted,

is a reference to a person by whom, or a place from which, the programmes are transmitted to the satellite by means of which the service is provided.

(7) For the purposes of this Act—

- (a) a person shall not be regarded as carrying on business as an advertising agent, or as acting as such an agent, unless he carries on a business involving the selection and purchase of advertising time or space for persons wishing to advertise;
- (b) a person who carries on such a business shall be regarded as carrying on business as an advertising agent irrespective of whether in law he is the agent of those for whom he acts;

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- (c) a person who is the proprietor of a newspaper shall not be regarded as carrying on business as an advertising agent by reason only that he makes arrangements on behalf of advertisers whereby advertisements appearing in the newspaper are also to appear in one or more other newspapers;
- (d) a company or other body corporate shall not be regarded as carrying on business as an advertising agent by reason only that its objects or powers include or authorise that activity.

#### Textual Amendments

- F131** Definition of “a BBC company” inserted (24.7.1996) in s. 202(1) by 1996 c. 55, s. 136, **Sch. 8**, para. 8 (with s. 43(1)(6))
- F132** Definition of “a Channel 4 company” inserted (1.10.1996) in s. 201(1) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(a)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F133** Words in definition of “connected” in s. 202(1) substituted (1.11.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(c)** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**
- F134** S. 202(1): definitions of “EEA Agreement” and “EEA State” inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 14(2)**
- F135** Definition of “an S4C company” inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(c)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F136** S. 202(2)(a) repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, art. 4
- F137** Words in s. 202(2)(b) repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, art. 4
- F138** S. 202(5A) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 14(3)**

#### Marginal Citations

- M66** 1984 c. 12.
- M67** 1949 c. 54.

### 203 Consequential and transitional provisions.

- (1) The enactments mentioned in Schedule 20 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the provisions of this Act).
- (2) Unless the context otherwise requires, in any enactment amended by this Act—
  - “programme”, in relation to a programme service, includes any item included in that service; and
  - “television programme” includes a teletext transmission.
- (3) The enactments mentioned in Schedule 21 to this Act (which include certain spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The transitional provisions and savings contained in Schedule 22 to this Act shall have effect.

### 204 Short title, commencement and extent.

- (1) This Act may be cited as the Broadcasting Act 1990.

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- (2) This Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.
- (3) Subject to subsections (4) and (5), this Act extends to the whole of the United Kingdom.
- (4) In Part VII—
  - (a) section 162 and Schedule 15 extend to England and Wales only;
  - (b) section 163 extends to Scotland only;
  - (c) section 164 extends to England and Wales and Scotland; and
  - (d) section 165 extends to Northern Ireland only.
- (5) The amendments and repeals in Schedules 20 and 21 have the same extent as the enactments to which they refer.
- (6) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend to the Isle of Man or any of the Channel Islands with such modifications, if any, as appear to Her Majesty to be appropriate.

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**Subordinate Legislation Made**

**P1** S. 204(2): power of appointment partly exercised by S.I. 1990/2347



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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE INDEPENDENT TELEVISION COMMISSION: SUPPLEMENTARY PROVISIONS

##### *Status and capacity*

- 1 (1) The Commission shall be a body corporate.
- (2) The Commission shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the Commission as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including (subject to sub-paragraph (4)) the borrowing of money.
- (4) The power of the Commission to borrow money (otherwise than under paragraph 13) shall not be exercised by them except with the consent of, or in accordance with a general authority given by, the Secretary of State.

##### *Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Commission so long as he is—
  - (a) a governor or employee of the BBC;
  - (b) a member or employee of the Corporation; [<sup>F139</sup>or
  - (c) a member or employee of the Broadcasting Standards Commission.]
- (2) The members of the Commission shall not at any time include more than one person who is either a member or an employee of the Welsh Authority.
- (3) Three out of the members of the Commission other than the chairman and deputy chairman shall be persons who appear to the Secretary of State to be suited to make the interests of Scotland, Wales and Northern Ireland, respectively, their special care.
- (4) Before appointing a person to be a member of the Commission, the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Commission; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the Commission that he has no such interest.
- (5) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the Commission shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (4).

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### Textual Amendments

**F139** Word “or” and Sch. 1 para. 2(c) substituted for paragraphs (c) and (d) (1.4.1997) by 1996 c. 55, s. 148(1), Sch. 10 Pt. II, para. 22 (with s. 43(1)(6)); S.I. 1997/1005, art. 4

### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Commission shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Commission for more than five years at a time.
- (3) Any member of the Commission may at any time resign his office by notice in writing to the Secretary of State.

### *Remuneration and pensions of members*

- 4 (1) The Commission may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The Commission may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

### *Disqualification of members of Commission for House of Commons and Northern Ireland Assembly*

- 5 In Part II of Schedule 1 to the <sup>M68</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Independent Television Commission”; and a corresponding amendment shall be made in Part II of Schedule 1 to the <sup>M69</sup>

Northern Ireland Assembly Disqualification Act 1975.

### Marginal Citations

**M68** 1975 c. 24.

**M69** 1975 c. 25.

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### *Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Commission and the arrangements relating to their meetings shall be such as the Commission may determine.
- (2) The arrangements may provide for the discharge, under the general direction of the Commission, of any of the Commission's functions by a committee or by one or more of the members or employees of the Commission.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Commission shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
- (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Commission, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Commission at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Commission by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Commission in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Commission include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Commission shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

### *Employees of the Commission*

- 9 (1) The Commission shall appoint a secretary and may appoint such other employees as they may determine.
- (2) If the Commission determine to do so in the case of any of their employees, the Commission shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Commission may determine.
- (3) If any employee of the Commission—
- (a) is a participant in any pension scheme applicable to his employment, and
- (b) becomes a member of the Commission,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the Commission were service as an employee of the Commission.

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#### *Authentication of Commission's seal*

- 10 The application of the seal of the Commission shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### *Presumption of authenticity of documents issued by Commission*

- 11 Any document purporting to be an instrument issued by the Commission and to be duly executed under the seal of the Commission or to be signed on behalf of the Commission shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

#### *Finances of Commission*

- 12 (1) It shall be the duty of the Commission so to conduct their affairs as to secure that their revenues become at the earliest possible date, and continue thereafter, at least sufficient to enable them to meet their obligations and to discharge their functions under this Act.
- (2) Any excess of the Commission's revenues for any financial year over the sums required by them for that year for meeting their obligations and discharging their functions under this Act shall be applied by the Commission in such manner as the Secretary of State may direct with the approval of the Treasury and after consultation with the Commission.
- (3) A direction under sub-paragraph (2) may require the whole or any part of any excess of the revenues of the Commission to be paid into the Consolidated Fund.

#### *Advances to Commission*

- 13 (1) For the purpose of—
- (a) furnishing the Commission with working capital, or
  - (b) enabling them to meet any capital expenditure,
- the Secretary of State may, with the consent of the Treasury, make advances to the Commission out of money provided by Parliament.
- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Commission under this paragraph shall not at any time exceed £5 million.
- (3) Any sums advanced under this paragraph shall be repaid to the Secretary of State at such times and by such methods, and interest on those sums shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.

#### *Accounts and audit*

- 14 (1) The Commission shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The accounts of the Commission shall be audited by auditors to be appointed by the Commission with the approval of the Secretary of State.

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- [<sup>F140</sup>(3) A person shall not be qualified to be as an auditor in pursuance of sub-paragraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Commission shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Commission; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Commission.

#### Textual Amendments

**F140** Sch. 1 para. 14(3) substituted (01.10.1991) by S.I. 1991/1997, reg. 2, Sch. para.77(2).

#### *Annual reports*

- 15 (1) As soon as possible after the end of every financial year, the Commission shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall include a report by the Commission on the extent to which holders of Channel 3 or Channel 5 licences have failed to comply with the conditions included in their licences in pursuance of section 33(1)(a).
- (3) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Commission) as the Secretary of State may from time to time direct.

#### *Advisory committees*

- 16 The Commission may appoint, or arrange for the assistance of, advisory committees to give advice to them on such matters relating to the Commission's functions as the Commission may determine.

### SCHEDULE 2

Sections 5 and 88.

#### RESTRICTIONS ON THE HOLDING OF LICENCES

#### PART I

#### GENERAL

- 1 (1) In this Schedule—
- [<sup>F141</sup>“the 1996 Act” means the Broadcasting Act 1996;]

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“advertising agency” means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an individual who—

- (a) is a director or officer of any body corporate which carries on such a business, or
  - (b) is employed by any person who carries on such a business;
- “associate”—

[<sup>F142</sup>(a) in relation to a body corporate, shall be construed in accordance with paragraph (1A), and]

- (b) in relation to an individual, shall be construed in accordance with subparagraph (2);
- “control”—

- (a) in relation to a body corporate, shall be construed in accordance with subparagraph (3), and
- (b) in relation to any body other than a body corporate, means the power of a person to secure, [<sup>F143</sup>by whatever means and whether directly or indirectly], that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

[<sup>F144</sup>“coverage area”, in relation to a service, shall be construed in accordance with paragraph 3A;

“digital programme service” has the same meaning as in Part I of the 1996 Act;]

“equity share capital” has the same meaning as in the <sup>M70</sup>Companies Act 1985;

“local authority”—

- (a) in relation to England <sup>F145</sup> . . . , means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;

[<sup>F146</sup>(aa) in relation to Wales, means a county council or county borough council;]

- (b) in relation to Scotland, means a [<sup>F147</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994]; and

- (c) in relation to Northern Ireland, means a district council;

“local delivery licence” has the meaning given by section 72(5), and “local delivery service” has the meaning given by section 72(1);

[<sup>F148</sup>“local digital sound programme service” and “national digital sound programme service” have the same meaning as in Part II of the 1996 Act;

“local radio multiplex service” and “national radio multiplex service” have the same meaning as in Part II of the 1996 Act;]

“participant”, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body.

[<sup>F149</sup>“television multiplex service” means a multiplex service within the meaning of Part I of the 1996 Act.]

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[<sup>F150</sup>(1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—

- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
- (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.]

(2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely—

- (a) any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife;
- (b) any individual and any body corporate of which that individual is a director;
- (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
- (d) persons carrying on business in partnership and the husband or wife and relatives of any of them;
- (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

and in this sub-paragraph "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband.

[<sup>F151</sup>(3) For the purposes of this Schedule a person controls a body corporate if—

- (a) he holds, or is beneficially entitled to, more than 50 per cent. of the equity share capital in the body, or possesses more than 50 per cent. of the voting power in it, or
- (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body are conducted in accordance with his wishes; or
- (c) he holds, or is beneficially entitled to, 50 per cent. of the equity share capital in that body, or possesses 50 per cent. of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

(3A) For the purposes of sub-paragraph (3)(c)—

- (a) "arrangement" includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
- (b) a person shall be treated—
  - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and
  - (ii) as possessing any voting power possessed by such a body corporate.]

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- (4) .....
- (5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.
- [<sup>F152</sup>(6) In this Schedule any reference to a participant with more than a 20 per cent. interest in a body corporate is a reference to a person who—
- (a) holds or is beneficially entitled to more than 20 per cent. of the shares in that body, or
  - (b) possesses more than 20 per cent. of the voting power in that body.
- (7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—
- (a) to an interest of more than a specified percentage in a body corporate, or
  - (b) to an interest of a specified percentage or more in a body corporate.
- (8) Any reference in this Schedule to a person who is over a particular age is a reference to a person who has attained that age.]

#### Textual Amendments

- F141** Definition inserted in Sch. 2 Pt. I para. 1(1) inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(2)(a)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F142** Definition in Sch. 2 Pt. I para. 1(1) substituted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1 (2)(b)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F143** Words in Sch. 2 Pt. I para. 1(1) substituted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(2)(c)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F144** Definitions in Sch. 2 Pt. I para. 1(1) inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(2)(d)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F145** Sch. 2 Pt. I: Words in definition “local authority” in para. 1(1)(a) repealed (1.4.1996) by 1994 c. 19, ss. 66(6)(8), Sch. 16 para. 89, **Sch. 18**. (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F146** Sch. 2 Pt. I para. 1(1)(aa) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 89** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F147** Sch. 2 Pt. I para. 1(1)(b): Words beginning “council constituted” to “(Scotland Act 1994)” substituted (S.) (1.4.1996) for words “regional, islands or district council” by 1994 c. 39, s. 180(1), **Sch. 13 para. 166** (with s. 128(8)); S.I. 1996/323, **art. 4(c)**
- F148** Definitions in Sch. 2 Pt. I para. 1(1) inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(2)(e)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F149** Definition of “television multiplex service” in Sch. 2 Pt. I para. 1(1) inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(2)(f)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F150** Sch. 2 Pt. I para. 1(1A) inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(3)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F151** Sch. 2 Pt. I para. 1(3) substituted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(4)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**
- F152** Sch. 2 Pt. I para. 1(6)(7)(8) substituted (10.8.1996 for certain purposes otherwise 1.11.1996) for sub-paragraph (6) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 1(6)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**



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### Marginal Citations

M70 1985 c. 6.

- 2 (1) [<sup>F153</sup>Subject to sub-paragraph (1A)] Any reference in paragraph 1 above to a person—
- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
  - (b) possessing voting power, or any amount of the voting power, in a body corporate,

is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.

[<sup>F154</sup>(1A) For the purposes of this Schedule, a person's holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—

- (a) he holds the shares concerned—
  - (i) as a nominee,
  - (ii) as a custodian (whether under a trust or by a contract), or
  - (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, as defined by section 220(1) of the Companies Act 1985, in respect of the shares concerned, and
- (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.

(1B) For the purposes of sub-paragraph (1A)(b)—

- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
- (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.]

<sup>F155</sup>(2) .....

<sup>F156</sup>(3) .....

### Textual Amendments

**F153** Words in Sch. 2 Pt. I para. 2(1) inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 2(2)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**

**F154** Sch. 2 Pt. I para. 2(1A)(1B) inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 2(3)** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**

**F155** Sch. 2 Pt. I para. 2(2) repealed (1.11.1996) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

**F156** Sch. 2 Pt. I para. 2(3) repealed (1.11.1996) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

[<sup>F157</sup>3 For the purposes of this Schedule the following persons shall be treated as connected with a particular person—

- (a) a person who controls that person,
- (b) an associate of that person or of a person falling within paragraph (a), and

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- (c) a body which is controlled by that person or by an associate of that person.]

#### Textual Amendments

**F157** Sch. 2 Pt. I para. 3 substituted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, Sch. 2 Pt. I para. 3 (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, Sch. 2

<sup>F158</sup>3A(1) In this Schedule “coverage area”—

- (a) in relation to any service licensed by the Commission under Part I of this Act or a television multiplex service licensed by them under Part I of the 1996 Act, means the area of the United Kingdom from time to time determined by the Commission as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine,
- (b) in relation to any digital programme service which is broadcast by means of a television multiplex service, means the area of the United Kingdom from time to time determined by the Commission as that within which the digital programme service as so broadcast is capable of being received at such a level,
- (c) in relation to any service licensed by the Authority under Part III of this Act, means the area of the United Kingdom from time to time determined by the Authority as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine, and
- (d) in relation to any local radio multiplex service licensed by the Authority under Part II of the 1996 Act or any local digital sound programme service which is broadcast by means of such a local radio multiplex service, means the area of the United Kingdom from time to time determined by the Authority as that within which the local radio multiplex service is capable of being received at such a level.

(2) Where the Commission or the Authority make any determination under this paragraph, they shall—

- (a) publish the determination in such manner as they think fit, and
- (b) send a copy of it to such persons holding licences granted by them as appear to them to be affected by the determination.]

#### Textual Amendments

**F158** Sch. 2 Pt. I paras. 3A, 3B inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, Sch. 2 Pt. I para. 4 (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, Sch. 2

<sup>F159</sup>3B (1) For the purposes of this Schedule—

- (a) a person who holds a licence to provide digital programme services shall be taken to provide a digital programme service if, under a contract between him and a person who holds a licence to provide a television multiplex service, that person is obliged to broadcast the digital programme service by means of the television multiplex service;
- (b) a person who holds a licence to provide national digital sound programme services shall be taken to provide a national digital sound programme service if, under a contract between him and a person who holds a licence to provide

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- a national radio multiplex service, that person is obliged to broadcast the national digital sound programme service by means of the national radio multiplex service;
- (c) a person who holds a licence to provide local digital sound programme services shall be taken to provide a local digital sound programme service if, under a contract between him and a person who holds a licence to provide a local radio multiplex service, that person is obliged to broadcast the local digital sound programme service by means of the local radio multiplex service.
- (2) For the purposes of this Schedule a person who holds a licence to provide digital programme services, national digital sound programme services or local digital sound programme services shall also be taken to provide a digital programme service, a national digital sound programme service or a local digital sound programme service (as the case may be) if he also holds a relevant multiplex licence and is broadcasting that service under that licence.
- (3) In sub-paragraph (2), “relevant multiplex licence” means—
- (a) in relation to digital programme services, a licence to provide a television multiplex service,
- (b) in relation to national digital sound programme services, a licence to provide a national radio multiplex service, and
- (c) in relation to local digital sound programme services, a licence to provide a local radio multiplex service.

#### Textual Amendments

**F159** Sch. 2 Pt. I paras. 3A, 3B inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 4** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**

- 4 An order under [F160 any provision of this Schedule other than paragraph 7 in Part III] shall not be made by the Secretary of State unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F160** Words in Sch. 2 Pt. I para. 4 substituted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 5** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**

## PART II

### DISQUALIFICATION FOR HOLDING LICENCES

#### *General disqualification of non-EEC nationals and bodies having political connections*

- 1 (1) Subject to sub-paragraph (2), the following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) an individual who is neither—
- (i) a national of a member State who is ordinarily resident within the European Economic Community, nor

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- (ii) ordinarily resident in the United Kingdom, the Isle of Man or the Channel Islands;
  - (b) a body corporate which is neither—
    - (i) a body formed under the law of a member State which has its registered or head office or principal place of business within the European Economic Community, nor
    - (ii) a body incorporated under the law of the Isle of Man or the Channel Islands;
  - (c) a local authority;
  - (d) a body whose objects are wholly or mainly of a political nature;
  - (e) a body affiliated to a body falling within paragraph (d);
  - (f) an individual who is an officer of a body falling within paragraph (d) or (e);
  - (g) a body corporate which is an associate of a body corporate falling within paragraph (d) or (e);
  - (h) a body corporate in which a body falling within any of paragraphs (c) to (e) and (g) is a participant with more than a 5 per cent. interest;
  - [<sup>F161</sup>(hh) a body corporate which is controlled by a body corporate falling within paragraph (h);]
  - (i) a body which is controlled by a person falling within any of paragraphs (a) to (g) or by two or more such persons taken together; and
  - (j) a body corporate in which a body falling within paragraph (i), other than one which is controlled—
    - (i) by a person falling within paragraph (a), (b) or (f), or
    - (ii) by two or more such persons taken together,
 is a participant with more than a 5 per cent. interest.
- (2) Sub-paragraph (1) shall apply in relation to—
- (a) a local delivery licence,
  - (b) a licence to provide a [<sup>F162</sup>satellite television] service,
  - (c) a licence to provide a non-domestic satellite radio service,
  - (d) a licence to provide a licensable programme service,
  - (e) a licence to provide a licensable sound programme service, <sup>F163</sup> . . .
  - (f) a licence to provide additional services (within the meaning of Part I or III of this Act) other than a licence to provide the teletext service referred to in section 49(2) of this Act,
  - [<sup>F164</sup>(g) a licence to provide a television multiplex service, a national radio multiplex service or a local radio multiplex service,
  - (h) a licence to provide digital additional services (within the meaning of Part I or II of the 1996 Act),
  - (i) a licence to provide digital programme services, or
  - (j) a licence to provide national or local digital sound programme services,]
- as if paragraphs (a) and (b) (and the reference to those paragraphs in paragraph (i)) were omitted.
- (3) In sub-paragraph (2)(c) “non-domestic satellite radio service” means a satellite service within the meaning of Part III of this Act which is not provided on any frequency allocated to the United Kingdom for broadcasting by satellite.

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### Textual Amendments

- F161** Sch. 2 Pt. II para. 1(1)(hh) inserted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 6(2)** (with s. 43(1)(6)); 1996/2120, art. 5, Sch. 2
- F162** Words in Sch. 2 Pt. II para. 1(2)(b) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 15**
- F163** Sch. 2 Pt. II para. 1(2)(e) repealed (1.11.1996) by 1996 c. 55, s. 73, Sch. 2 Pt. I para. 6(3), **Sch. 11 Pt. I** (with s. 43(1)(6)); 1996/2120, art. 5, Sch. 2
- F164** Sch. 2 Pt. II para. 1(2)(g)-(j) inserted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 6(3)** (with s. 43(1)(6)); 1996/2120, art. 5, Sch. 2

### *Disqualification of religious bodies*

- 2 (1) Subject to sub-paragraph (2), the following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) a body whose objects are wholly or mainly of a religious nature;
  - (b) a body which is controlled by a body falling within paragraph (a) or by two or more such bodies taken together;
  - (c) a body which controls a body falling within paragraph (a);
  - (d) a body corporate which is an associate of a body corporate falling within paragraph (a), (b) or (c);
  - (e) a body corporate in which a body falling within any of paragraphs (a) to (d) is a participant with more than a 5 per cent. interest;
  - (f) an individual who is an officer of a body falling within paragraph (a); and
  - (g) a body which is controlled by an individual falling within paragraph (f) or by two or more such individuals taken together.
- (2) If on an application made to them under this sub-paragraph—
- (a) the Commission are satisfied that it is appropriate for a person to hold—
    - (i) a licence to provide a [<sup>F165</sup>satellite television] service, or
    - (ii) a licence to provide a licensable programme service, or
  - (b) the Authority are satisfied that it is appropriate for a person to hold a particular kind of licence that may be granted by them under Part III of this Act other than a national licence,
- being a person who, apart from this sub-paragraph, would be a disqualified person in relation to any such licence by virtue of sub-paragraph (1), they shall make a determination to the effect that they are so satisfied; and so long as any such determination remains in force in relation to that person, sub-paragraph (1) shall not apply to him in relation to any such licence.
- (3) The Commission and the Authority shall each publish, in such manner as they consider appropriate, general guidance to persons making applications to them under sub-paragraph (2) as to the principles to be applied by them in determining whether it is appropriate for such persons to hold licences falling within paragraph (a) or (as the case may be) paragraph (b) of that sub-paragraph.

### Textual Amendments

- F165** Words in Sch. 2 Pt. II para. 2(2)(a)(i) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 15**

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*Disqualification of publicly-funded bodies for radio service licences*

- 3 (1) The following persons are disqualified persons in relation to any licence granted by the Authority other than a licence to provide a restricted service—
- (a) a body <sup>F166</sup>(other than a local authority, the Welsh Authority or the BBC)] which has, in its last financial year, received more than half its income from public funds;
  - (b) a body which is controlled by a body falling within paragraph (a) or by two or more such bodies taken together; and
  - (c) a body corporate in which a body falling within paragraph (a) or (b) is a participant with more than a 5 per cent. interest.
- (2) For the purposes of sub-paragraph (1)(a) money is received from public funds if it is paid—
- (a) by a Minister of the Crown out of money provided by Parliament or out of the National Loans Fund;
  - (b) by a Northern Ireland department out of the Consolidated Fund of Northern Ireland or out of money appropriated by Measure of the Northern Ireland Assembly; or
  - (c) by a body which itself falls within sub-paragraph (1)(a), including a body which falls within that provision by virtue of this paragraph;
- but, in each case, there shall be disregarded any money paid as consideration for the acquisition of property or the supply of goods or services or as remuneration, expenses, pensions, allowances or similar benefits for or in respect of a person as the holder of an office.

**Textual Amendments**

**F166** Words in Sch. 2 Pt. II para. 3(1)(a) substituted (24.7.1996 for certain purposes, otherwise 1.11.1996) by 1996 c. 55, ss. 73, 149(1)(a), **Sch. 2 Pt. II para. 7** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

*General disqualification on grounds of undue influence*

- 4 (1) A person is a disqualified person in relation to a licence granted by the Commission or the Authority if in the opinion of that body—
- (a) any relevant body is, by the giving of financial assistance or otherwise, exerting influence over the activities of that person, and
  - (b) that influence has led, is leading or is likely to lead to results which are adverse to the public interest.
- (2) In sub-paragraph (1) “relevant body”—
- (a) in relation to a licence granted by the Commission, means a body falling within paragraph 1(1)(c) to (h) or (j) above or a body which is controlled—
    - (i) by a person falling within paragraph 1(1)(c) to (g) above, or
    - (ii) by two or more such persons taken together; and
  - (b) in relation to a licence granted by the Authority, means a body falling within paragraph 1(1)(c) to (h) or (j) or 3 above or a body which is controlled as mentioned in paragraph (a)(i) or (ii) above.

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*General disqualification of broadcasting bodies*

- 5 The following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) the BBC;
  - (b) the Welsh Authority;
  - <sup>F167</sup>(c) .....
  - <sup>F167</sup>(d) .....

**Textual Amendments**

**F167** Sch. 2 Pt. II para. 5(c)(d) repealed (24.7.1996 for certain purposes, otherwise 1.11.1996) by 1996 c. 55, ss. 73, 149(1)(a), Sch. 2 Pt. I para. 8, **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

*<sup>F168</sup>Disqualification of certain companies for certain licences*

**Textual Amendments**

**F168** Sch. 2 Pt. II para. 5A and cross-heading inserted (24.7.1996 for certain purposes, otherwise 1.10.1996) by 1996 c. 55, ss. 73, 149(1)(a), **Sch. 2 Pt. II para. 9** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

- <sup>F169</sup>5A(1) A BBC company, a Channel 4 company or an S4C company is a disqualified person in relation to—
- (a) any licence granted by the Commission to provide regional or national Channel 3 services or Channel 5, and
  - (b) any licence granted by the Commission to provide a local delivery service.
- (2) A BBC company is also a disqualified person in relation to any licence granted by the Authority to provide a national, local or restricted service within the meaning of Part III of this Act.
- (3) The Secretary of State may by order provide that sub-paragraph (1)(b) shall not have effect in relation to any local delivery service of a description specified in the order.]

**Textual Amendments**

**F169** Sch. 2 Pt. II para. 5A inserted (24.7.1996 for certain purposes, otherwise 1.10.1996) by 1996 c. 55, ss. 73, 149(1)(a), **Sch. 2 Pt. II para. 9** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

*General disqualification of advertising agencies*

- 6 The following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) an advertising agency;
  - (b) an associate of an advertising agency;
  - (c) any body which is controlled by a person falling within sub-paragraph (a) or (b) or by two or more such persons taken together;
  - (d) any body corporate in which a person falling within any of sub-paragraphs (a) to (c) is a participant with more than a 5 per cent. interest.



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### [<sup>F170</sup>PART III

#### RESTRICTIONS TO PREVENT ACCUMULATIONS OF INTERESTS IN LICENSED SERVICES]

##### Textual Amendments

**F170** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

[<sup>F171</sup>1] (1) In this Part of this Schedule “relevant services” means any such services as are mentioned in sub-paragraphs (2) and (3) and, for the purposes of this Part, relevant services shall (subject to paragraph 9) be divided into the [<sup>F172</sup>sixteen ]categories specified in those sub-paragraphs.

(2) In the case of services licensed by the Commission, the categories are—

- (a) regional and national Channel 3 services and Channel 5;
- (b) restricted services (within the meaning of Part I of this Act);
- [ satellite television services]
- <sup>F173</sup>(d)
- (e) licensable programme services;
- (f) additional services (within the meaning of Part I of this Act);
- (g) television multiplex services;
- (h) digital programme services; and
- (i) digital additional services (within the meaning of Part I of the 1996 Act).

(3) In the case of services licensed by the Authority, the categories are—

- (a) national radio services;
- (b) local radio services;
- (c) satellite radio services;
- (d) licensable sound programme services;
- (e) additional services (within the meaning of Part III of this Act);
- (f) national or local radio multiplex services;
- (g) national or local digital sound programme services; and
- (h) digital additional services (within the meaning of Part II of the 1996 Act)..

(4) References in this Part to national, local, restricted or satellite radio services are references to national, local, restricted or satellite services within the meaning of Part III of this Act.]

##### Textual Amendments

**F171** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

**F172** Word in Sch. 2 Pt. III para. 1(1) substituted (11.7.1997) by S.I. 1997/1682, **reg. 2, Sch. para. 16(2)(a)**

**F173** Sch. 2 Pt. III para. 1(2)(d) substituted for para. 1(2)(c)(d) (11.7.1997) by S.I. 1997/1682, **reg. 2, Sch. para. 16(2)(b)**



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*General limit on the holding of licences to provide television services or interests in bodies corporate holding such licences*

- <sup>F174</sup>2 (1) No one person may, at any time when his audience time in respect of the period of twelve months ending with the last day of the preceding calendar month exceeds 15 per cent. of total audience time in respect of that period—
- (a) hold two or more licences to provide relevant services falling within one or more of the categories specified in paragraph [<sup>F175</sup>1(2)(a), (d), (e) or (h)],
  - (b) be a participant with a qualifying interest in two or more bodies corporate each of which holds a licence, or two or more licences, to provide services falling within one or more of those categories,
  - (c) hold any licence to provide a relevant service falling within any of those categories and be a participant with a qualifying interest in any body corporate which holds such a licence or two or more such licences,
  - (d) provide a foreign satellite service and either hold any licence to provide a relevant service falling within any of those categories or be a participant with a qualifying interest in a body corporate which holds such a licence or two or more such licences, or
  - (e) hold a licence to provide relevant services falling within the category specified in paragraph 1(2)(h) and provide two or more such services.
- (2) For the purposes of sub-paragraph (1) a person's audience time at any time ("the relevant time") in respect of any period is the aggregate of—
- (a) the audience time attributable in respect of that period to each relevant service falling within any of the categories specified in paragraph [<sup>F175</sup>1(2)(a), (d), (e) or (h)] provided under a licence held by him at the relevant time,
  - (b) one half of the audience time attributable in respect of that period to any relevant service falling within any of the categories specified in paragraph [<sup>F175</sup>1(2)(a), (d), (e) or (h)] provided under a licence held by a body corporate which he does not control, but in which he is at the relevant time a participant with a qualifying interest, and
  - (c) the audience time attributable in respect of that period to any foreign satellite service provided by him at the relevant time.
- (3) In this paragraph "foreign satellite service" means any service (other than a [<sup>F176</sup>satellite television] service) which consists in the transmission of television programmes by satellite, is provided on a frequency other than one allocated to the United Kingdom for broadcasting by satellite and either—
- (a) appears to the Commission to be intended for general reception in the United Kingdom (whether or not it appears to them to be also intended for general reception elsewhere), or
  - (b) is (to any extent) relayed by a local delivery service.
- (4) References in this paragraph—
- (a) to the audience time attributable to any service in respect of any period, or
  - (b) to total audience time in respect of any period,
- shall be construed in accordance with paragraph 3.
- (5) In this paragraph "qualifying interest" means an interest of more than 20 per cent.
- (6) The Secretary of State may by order amend sub-paragraph (5)—

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- (a) by substituting a different percentage for any percentage for the time being specified there, and
  - (b) so as to specify different percentages in relation to licences to provide different services.
- (7) The Secretary of State may by order amend sub-paragraphs (1)(a), (2)(a) and (b) by adding a reference to relevant services falling within the category specified in paragraph 1(2)(b).

#### Textual Amendments

**F174** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

**F175** Words in Sch. 2 Pt. III para. 2(1)(a)(2)(a)(b) substituted (11.7.1997) by S.I. 1997/1682, art. 2, **Sch. para. 16(3)(a)**

**F176** Words in Sch. 2 Pt. III para. 2(3) substituted (11.7.1997) by S.I. 1997/1682, art. 2, **Sch. para. 16(3)(b)**

#### *Audience time and total audience time for purposes of paragraph 2*

- <sup>F1773</sup> (1) For the purposes of paragraph 2—
- (a) the audience time attributable to a service in respect of any period is an estimate by the Commission of the number of hours that would be produced by—
    - (i) ascertaining, in relation to every person who in that period watched any programme included in that service, the total amount of time he spent in that period watching programmes so included, and
    - (ii) adding together all the amounts of time so ascertained, and
  - (b) total audience time in respect of any period is the total of all the audience times attributable to services specified in sub-paragraph (2) in respect of that period.
- (2) The services referred to in sub-paragraph (1)(b) are—
- (a) every television programme service capable of being received in the British Islands, and
  - (b) every other service which consists wholly or mainly in the broadcasting, or transmission by satellite, from a place outside the British Islands of television programmes which are capable of being received in the British Islands.
- (3) For the purposes of this paragraph the Commission may disregard—
- (a) watching in such circumstances, or by persons of such description, as the Commission may from time to time determine,
  - (b) periods of watching whose duration does not exceed such length of time as they may so determine, and
  - (c) the watching of recordings of television programmes to such extent as they may so determine.
- (4) Any estimate required for the purposes of this paragraph may be made by the Commission in such manner, or by reference to such surveys conducted or statistics prepared by any one or more other persons, as they think fit.

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- (5) Any determination made by the Commission under sub-paragraph (4) shall be published by them in such manner as they think fit.
- (6) In this paragraph—
- (a) “programme” includes part of a programme, and
  - (b) references to watching a programme do not include references to watching it outside the British Islands.
- (7) If it appears to the Secretary of State that there has been a significant change in the audience measurement practices prevailing in the television industry, the Secretary of State may, after consulting the Commission, make such amendments of sub-paragraphs (1), (3) and (6) as he considers appropriate for the purpose of taking account of that change.

#### Textual Amendments

**F177** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

#### *Restrictions on holding of licences to provide Channel 3 services or Channel 5*

- F178**<sup>4</sup> (1) No one person may at any time hold a licence to provide a national Channel 3 service and a licence to provide Channel 5.
- (2) A person who holds a licence to provide a regional Channel 3 service for a particular area may not also hold any other licence to provide a regional Channel 3 service for that area.

#### Textual Amendments

**F178** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

#### *Limit on the holding of licences to provide television multiplex services*

- F179**<sup>5</sup> (1) No one person may at any time hold more than three licences to provide television multiplex services.
- (2) For the purposes of sub-paragraph (1), a person who is a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a television multiplex service but does not control that body shall be treated as holding the licence held by that body.
- (3) No one person may at any time, in relation to each of five or more licences to provide television multiplex services, be either the holder of the licence or a participant with more than a 10 per cent. interest in a body corporate which holds the licence.

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- (4) In relation to any person who, under any arrangement with the BBC, provides a television multiplex service for the BBC (on a frequency which is not assigned to the Commission under section 6(1) of the 1996 Act)—
- (a) sub-paragraph (1) shall have effect as if the reference to three licences were a reference to two licences, and
  - (b) sub-paragraph (3) shall have effect as if the reference to five licences were a reference to four licences.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraphs (1) to (4) by substituting a different numerical limit or percentage for any numerical limit or percentage for the time being specified there,
  - (b) designate any television multiplex service as a regional multiplex service for the purposes of this sub-paragraph, and
  - (c) prescribe restrictions on the holding by any one person of two or more licences to provide regional multiplex services whose coverage areas are to a significant extent the same.
- (6) The Secretary of State shall not designate any television multiplex service as a regional television multiplex service for the purposes of sub-paragraph (5) unless less than half of the population of the United Kingdom is resident within the proposed coverage area of the service.

#### Textual Amendments

**F179** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, Sch. 2 Pt. III para. 10 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2; S.I. 1997/1005, art. 4

#### *Limits on the holding, by persons providing digital programme services, of licences to provide other categories of service*

- F180** (1) The Secretary of State may by order prescribe restrictions on the holding, by a person who is providing a digital programme service by means of a television multiplex service designated by order under paragraph 5(5)(b) as a regional multiplex service, of a licence to provide any service specified in sub-paragraph (2) whose coverage area is to a significant extent the same as that of the digital programme service.
- (2) The services referred to in sub-paragraph (1) are—
- (a) a regional Channel 3 service,
  - (b) a local radio service, and
  - (c) a local radio multiplex service.
- (3) The Secretary of State may also by order prescribe restrictions on the provision by any one person at any time of both—
- (a) a digital programme service by means of a television multiplex service which is designated by order under paragraph 5(5)(b) as a regional multiplex service, and
  - (b) a digital sound programme service whose coverage area is to a significant extent the same as that of the digital programme service.

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### Textual Amendments

**F180** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

### *Limit in relation to provision of digital programme services*

- F1817** (1) No person holding a licence to provide digital programme services may, at any time before such day as the Secretary of State may by order appoint for the purposes of this paragraph, provide digital programme services by means of two or more television multiplex services if the number of points attributable to those digital programme services (calculated in accordance with this paragraph) exceeds the permitted maximum.
- (2) Subject to sub-paragraphs (3) to (5), the number of points attributable to any digital programme service is two.
- (3) Where—
- (a) the population within the coverage area of a digital programme service is less than half of the population within the coverage area of the television multiplex service by means of which it is provided, or
  - (b) a digital programme service is provided by means of a television multiplex service designated by the Secretary of State by order under paragraph 5(5) (b) as a regional multiplex service, or
  - (c) average weekly air time in relation to a digital programme service is at least 12 hours but less than 50 hours, or
  - (d) in the case of a digital programme service which was first provided after the beginning of the relevant period, the applicant has notified the Commission of his intention to provide a service in relation to which average weekly air time will be at least 12 hours but less than 50 hours,
- the number of points attributable to that digital programme service is one.
- (4) Subject to sub-paragraph (5), where—
- (a) average weekly air time in relation to a digital programme service is less than 12 hours, or
  - (b) in the case of a digital programme service which was first provided after the beginning of the relevant period, the applicant has notified the Commission of his intention to provide a service in relation to which average weekly air time will be less than 12 hours,
- no points are attributable to that digital programme service.
- (5) Where the average weekly air time in relation to each of two or more digital programme services (“the relevant services”) provided by any one holder of a licence to provide digital programme services is less than 12 hours, the relevant services shall be treated for the purposes of this paragraph as if they were one service with an average weekly air time equal to the aggregate of the average weekly air times in relation to the relevant services..

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- (6) For the purposes of sub-paragraphs (3) to (5), as they have effect in relation to the operation of sub-paragraph (1) at any time—
- (a) “the relevant period” means the period of 13 weeks ending with the last week falling wholly within the previous calendar month, and
  - (b) “average weekly air time”, in relation to a digital programme service, means the average number of hours per week for which the service has been broadcast during the relevant period;
- and in this sub-paragraph “week” means a week ending with Saturday.
- (7) The permitted maximum shall be determined by reference to the total number of points attributable to all digital programme services being provided by the holders of licences to provide such services, as follows—
- (a) where the total number of points is not more than 10, the permitted maximum is 2,
  - (b) where the total number of points is more than 10 but less than 24, the permitted maximum is 4, and
  - (c) where the total number of points is 24 or more, the permitted maximum is one quarter of that total.
- (8) For the purposes of this paragraph a person who holds a licence to provide digital programme services and is a participant with more than a 20 per cent. interest in a body corporate which also holds such a licence, but who does not control that body, shall be taken to provide any digital programme services provided by that body.
- (9) The Secretary of State may by order amend this paragraph—
- (a) by altering the number of points for the time being attributable to digital programme services falling within sub-paragraph (2), (3) or (4),
  - (b) by substituting a different number of hours for the number for the time being specified in sub-paragraph (3), (4) or (5),
  - (c) by substituting different numbers for any numbers for the time being specified in sub-paragraph (7), and
  - (d) by substituting a different percentage for the percentage for the time being specified in sub-paragraph (8).
- (10) An order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F181** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, Sch. 2 Pt. III para. 10 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2; S.I. 1997/1005, art. 4

#### *Limits in relation to licences to provide radio services*

- <sup>F182</sup>8 (1) No one person may, at any time before such day as the Secretary of State may by order appoint for the purposes of this paragraph (in this paragraph referred to as “the appointed day”) hold two or more licences to provide services falling within one or more of the categories specified in paragraph 1(3)(a) or (b) such that the total number of points attributable to those services, calculated in accordance with paragraph 9,

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exceeds 15 per cent. of the total number of points so calculated attributable to all such services in respect of which licences are in force or have been awarded.

- (2) No one person may, at any time on or after the appointed day—
- (a) hold two or more licences to provide services falling within one or more of the categories specified in paragraph 1(3)(a), (b) or (g) such that the total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to—
- (i) all national or local radio services in respect of which licences are in force or have been awarded, and
- (ii) all national or local digital sound programme services which are being provided, or
- (b) hold a licence to provide services falling within the category specified in paragraph 1(3)(g) and provide two or more services falling within that category such that the total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to all the services referred to in paragraph (a)(i) or (ii).
- (3) Before making an order appointing a day for the purposes of this paragraph, the Secretary of State shall consult the Authority.

#### Textual Amendments

**F182** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

#### *Calculation of points for purposes of paragraph 8*

- <sup>F183g</sup> (1) For the purposes of paragraph 8, to the categories of national or local radio services and national or local digital sound programme services set out in the Table below there shall be attributed points according to that Table.

TABLE

<i>Category of service</i>	<i>Points</i>
National radio service or national digital sound programme service	25
Category A local radio service or Category A local digital sound programme service	15
Category B local radio service or Category B local digital sound programme service	8
Category C local radio service or Category C local digital sound programme service	3



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Category D local radio service or Category D local digital sound programme service	1
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- (2) For the purposes of the Table a local radio service or local digital sound programme service falls—
- into category A if the number of persons over the age of 15 resident in the coverage area of that service exceeds 4.5 million;
  - into category B if the number of such persons exceeds 1 million but does not exceed 4.5 million;
  - into category C if the number of such persons exceeds 400,000 but does not exceed 1 million; and
  - into category D if the number of such persons does not exceed 400,000.
- (3) No points shall be attributed to a national or local digital sound programme service unless the service is being provided.
- (4) In the case of a national or local radio service provided on an amplitude modulated (AM) frequency the relevant number of points attributable to the service by virtue of the Table shall be reduced by one third.
- (5) A service which, on the day on which the licence to provide it is granted, falls into a particular category for the purposes of the Table shall continue to be regarded as falling into that category so long as any increase or decrease in the relevant number of persons over the age of 15 (which would otherwise take the service outside that category) does not exceed 10 per cent.
- (6) A person who is a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a national or local radio service, but who does not control that body, shall for the purposes of paragraph 8 be treated as the holder of a licence to provide a national or local service to which one half of the points which would otherwise be attributable to such a service are attributed.
- (7) A person who is a participant with more than a 20 per cent. interest in a body corporate which provides a national or local digital sound programme service, but who does not control that body, shall for the purposes of paragraph 8 be treated as providing a national or local digital sound programme service to which one half of the points which would otherwise be attributable to such a service are attributed.

#### Textual Amendments

**F183** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

#### Modifications etc. (not altering text)

**C79** Sch. 2 Pt. III para. 9 applied (1.10.1996) by 1996 c. 55, s. 44(7)(a) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

#### Power to amend paragraphs 8 and 9

- <sup>F184</sup>10 (1) The Secretary of State may by order make such amendments of paragraphs 8 and 9 as he thinks fit for the purposes of including restricted radio services among the services



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referred to in any provision of paragraph 8 and of providing for the calculation of the points to be attributed to any such service, or any category of such service.

- (2) The Secretary of State may by order amend paragraph 9—
- (a) by substituting different categories for the categories for the time being set out in the Table in sub-paragraph (1) and in sub-paragraph (2) or adding further categories,
  - (b) by substituting a different number of points for the number of points for the time being attributed to each category,
  - (c) by substituting different population figures for those for the time being specified in sub-paragraph (2),
  - (d) by substituting a different age for the age for the time being specified in sub-paragraph (2)(a) and (5),
  - (e) by substituting a different fraction for the fraction for the time being specified in sub-paragraph (4) or repealing that sub-paragraph, or
  - (f) by substituting a different percentage for the percentage for the time being specified in sub-paragraphs (6) and (7) in relation to an interest in a body corporate or a different fraction for the fraction for the time being specified in those sub-paragraphs in relation to the points to be attributed to a person falling within either of those sub-paragraphs.

#### Textual Amendments

**F184** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73 Sch. 2 Pt. III para. 10 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2; S.I. 1997/1005, art. 4

#### *Limits in relation to licences to provide national radio services, radio multiplex services or digital sound programme services*

- F185**<sup>11</sup> (1) No one person may at any time hold more than one licence to provide a national radio service.
- (2) No one person may at any time—
- (a) hold more than one licence to provide a national radio multiplex service, or
  - (b) hold a licence to provide national digital sound programme services and provide more than one national digital sound programme service.
- (3) For the purposes of sub-paragraph (2)(a) a person who is a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a radio multiplex service but does not control that body shall be treated as holding the licence held by that body.
- (4) No one person may at any time—
- (a) hold a licence to provide a radio multiplex service and be a participant with more than a 10 per cent. interest in more than one body corporate which holds any other such licence, or
  - (b) be a participant with more than a 10 per cent. interest in each of three or more bodies corporate which hold such licences.

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- (5) The Secretary of State may by order—
- (a) amend sub-paragraph (1), (2) or (4) by substituting a different numerical limit for any numerical limit for the time being specified there, and
  - (b) amend sub-paragraph (3) or (4) by substituting a different percentage for any percentage for the time being specified there.

#### Textual Amendments

**F185** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, Sch. 2 Pt. III para. 10 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2; S.I. 1997/1005, art. 4

#### *Limits in relation to licences to provide local radio services in overlapping areas*

- <sup>F186</sup>12 (1) No one person may at any time hold any two licences to provide local radio services which share a potential audience unless either—
- (a) one of the licences is an AM licence and the other is an FM licence, or
  - (b) the Authority have determined that in all the circumstances, having regard to the matters specified in sub-paragraph (4), the holding by that person of the licences in question could not be expected to operate against the public interest within the area concerned.
- (2) No one person may at any time hold any three licences to provide local radio services any of which shares a potential audience with each of the other two services unless—
- (a) the licences include both an AM licence and an FM licence, and
  - (b) the Authority have determined that in all the circumstances, having regard to the matters specified in sub-paragraph (4), the holding by that person of the licences in question could not be expected to operate against the public interest within the area concerned.
- (3) No one person may at any time hold any four or more licences to provide local radio services any of which shares a potential audience with each of the other services.
- (4) The matters referred to in sub-paragraphs (1) and (2) are—
- (a) any reduction in plurality of ownership of local radio services within the area concerned that would result from a decision to allow the licences to be held together, and
  - (b) the likely effect of such a decision on—
    - (i) the range of programmes available by way of independent radio services to persons living in the area concerned, and
    - (ii) diversity in the sources of information available to the public in the area concerned and in the opinions expressed on local radio services received in that area.
- (5) For the purposes of this paragraph two local radio services share a potential audience if, but only if, the potential audience of one service includes more than half of the potential audience of the other service.
- (6) This paragraph has effect subject to paragraph 13.
- (7) In this paragraph—

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“AM licence” means a licence to provide a local radio service on an amplitude modulated frequency,

“FM licence” means a licence to provide such a service on a frequency modulated frequency, and

“potential audience”, in relation to a local radio service, means the persons over the age referred to in paragraph 9(2)(a) who reside in the coverage area of that service.

#### Textual Amendments

**F186** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *Power by order to impose different restrictions in place of paragraph 12*

**F187** 13 The Secretary of State may by order provide that, where a digital sound programme service is provided in any area, the holding by any one person of two or more licences to provide in that area local radio services which for the purposes of paragraph 12 share a potential audience with each other or with each of the others shall, instead of being subject to the restrictions specified in paragraph 12, be subject to other restrictions specified in the order.

#### Textual Amendments

**F187** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *Limits in relation to provision of local digital sound programme services*

**F188** 14 (1) Subject to sub-paragraph (2), no one person holding a licence to provide local digital sound programme services may at any time provide more than one non-simulcast service by means of a particular local radio multiplex service.

(2) Where—

(a) the coverage area of the local radio multiplex service is to a significant extent the same as that of another local radio multiplex service, and

(b) the person concerned is not providing any non-simulcast service by means of that other local radio multiplex service,

sub-paragraph (1) shall have effect as if the reference to one non-simulcast service were a reference to two such services.

(3) In this paragraph “non-simulcast service” means any local digital sound programme service other than one which—

(a) is provided by a person who holds a licence to provide a local radio service, and

(b) corresponds to that local radio service.

(4) For the purposes of sub-paragraph (3)(b) a local digital sound programme service corresponds to a local radio service if, and only if, in every calendar month—

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- (a) at least 80 per cent. of so much of the local radio service as consists of programmes, consists of programmes which are also included in the local digital sound programme service in that month, and
  - (b) at least 50 per cent. of so much of the local radio service as consists of such programmes is broadcast at the same time on both services.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraphs (1) and (2) by substituting a different numerical limit for any numerical limit for the time being specified there, and
  - (b) amend sub-paragraph (4)(a) or (b) by substituting a different percentage for any percentage for the time being specified there.
- (6) In subsection (4) “programme” does not include an advertisement.

#### Textual Amendments

**F188** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

#### *Further restrictions on holding of licences of different descriptions*

- <sup>F189</sup>15 (1) No one person may at any time hold—
- (a) a licence to provide a national Channel 3 service or Channel 5, and
  - (b) a licence to provide a national radio service.
- (2) No one person may at any time hold—
- (a) a licence to provide a local radio service or local digital sound programme services, and
  - (b) a licence to provide a regional Channel 3 service whose coverage area is to a significant extent the same as that of the local radio service or of any local digital sound programme service provided by him.

#### Textual Amendments

**F189** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

#### *Power to impose additional limits in relation to licences to provide television or radio services*

- <sup>F190</sup>16 (1) The Secretary of State may, in the case of—
- (a) any category of relevant services specified in paragraph [<sup>F191</sup>1(2)(b), (d) or (f)], or
  - (b) any category of relevant services specified in paragraph 1(3)(c) or (e),
- by order prescribe the maximum number of licences which may at any time be held by any one person to provide relevant services falling within that category.

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- (2) The Secretary of State may by order impose, in relation to any category of relevant services specified in paragraph 1(2)(a) or (b) or paragraph 1(3)(a), (b) or (f) or under sub-paragraph (1), limits on the holding of licences to provide relevant services falling within that category which are additional to the limits specified in paragraphs 2 to 15 or under that sub-paragraph and are framed—
- (a) by reference to any specified circumstances relating to the holders of the licences in question or to the services to be provided under them, or
  - (b) (in the case of licences granted by the Commission) by reference to matters determined by them under the order.
- (3) Without prejudice to the generality of sub-paragraph (2), an order made under that sub-paragraph may impose on the holder of a licence to provide any specified category of relevant services specified in paragraph 1(3) limits framed (directly or indirectly) by reference to either or both of the following matters, namely—
- (a) the number of licences of any one or more specified descriptions which are held by him or by any body controlled by him; and
  - (b) his participation, to any specified extent, in any body corporate which is the holder of any licence or licences of any one or more such descriptions.
- (4) Where a person holds—
- <sup>F192</sup>(a) .....
  - (b) a licence to provide a [<sup>F193</sup>satellite television] service, or
  - (c) a licence to provide a satellite radio service,
- which, in accordance with section <sup>F194</sup>... 45(3) or 86(2), authorises the provision of a multichannel service, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences to provide [<sup>F195</sup>satellite television services] or (as the case may be) satellite radio services as corresponds to the number of channels on which the service may be provided.
- (5) In sub-paragraph (4)—
- (a) “multichannel service” means a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies; and
  - (b) any reference to the number of channels on which such a service may be provided is a reference to the number of different frequencies involved.
- (6) Where a person who holds a licence to provide any of the services specified in sub-paragraph [<sup>F196</sup>(4)(b) or (c)] provides that service by broadcasting two or more programmes simultaneously in digital form on a single frequency, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences as corresponds to the number of programmes that are simultaneously transmitted.

#### Textual Amendments

**F190** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

**F191** Words in Sch. 2 Pt. III para. 16(1) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 16(4)(a)**

**F192** Sch. 2 Pt. III para. 16(4)(a) omitted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 16(4)(b)(i)**

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**F193** Words in Sch. 2 Pt. III para. 16(4)(b) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 16(4)(b)(ii)**

**F194** Word in Sch. 2 Pt. III para. 16(4) omitted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 16(4)(b)(iii)**

**F195** Words in Sch. 2 Pt. III para. 16(4) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 16(4)(b)(iv)**

**F196** Words in Sch. 2 Pt. III para. 16(6) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 16(4)(c)**

### *Connected persons*

<sup>F197</sup>17 (1) Subject to sub-paragraph (2), for the purposes of—

- (a) paragraphs 2 to 15, and
- (b) any order under paragraph 13 or 16(1) or (2),

a person shall be treated as holding a licence if the licence is held by a person connected with him and shall be treated as providing a service if the service is provided by a person connected with him.

(2) For the purposes of paragraph 12 and any order under paragraph 13, a person shall not be treated as holding a licence to provide a local radio service merely because he is a director of a body corporate which holds the licence.

(3) Any provision of paragraphs 2 to 14 which refers to a person’s participation in a body corporate shall have effect as if he and every person connected with him were one person.

#### **Textual Amendments**

**F197** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73 **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, art. 4

## <sup>F198</sup>PART IV

### RESTRICTIONS ON CONTROLLING INTERESTS IN BOTH NEWSPAPERS AND LICENSED SERVICES]

#### **Textual Amendments**

**F198** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, art. 4

### <sup>F199</sup>Meaning of “relevant authority”

#### **Textual Amendments**

**F199** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, art. 4



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- F200**<sup>1</sup> In this Part of this Schedule “the relevant authority”—
- (a) in relation to any restriction having effect in relation to any licence which has been or may be granted by the Commission, means the Commission, and
  - (b) in relation to any restriction having effect in relation to any licence which has been or may be granted by the Authority, means the Authority.]

#### Textual Amendments

**F200** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *National and local newspapers and their respective national and local market shares*

- F201**<sup>2</sup>
- (1) In this Part of this Schedule references to a national or local newspaper are (subject to sub-paragraph (3)) references to a national or local newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.
  - (2) Where a newspaper is published in different regional editions on the same day, the relevant authority may determine, having regard to all the circumstances, whether those regional editions are to be treated for the purposes of this Part of this Schedule as constituting one national newspaper, two or more local newspapers or one national newspaper and one or more local newspapers.
  - (3) The relevant authority may determine that a newspaper which would otherwise be neither a national nor a local newspaper for the purposes of this Part of this Schedule shall be treated as a national or (as the case may be) a local newspaper for the purposes of any particular restriction imposed by or under this Part of this Schedule if it appears to them to be appropriate for the newspaper to be so treated having regard to its circulation or influence in the United Kingdom or (as the case may be) in a part of the United Kingdom.
  - (4) For the purposes of this Part of this Schedule, the “national market share” of any national newspaper at any time in a calendar month is the total number of copies of that newspaper sold in the United Kingdom in the six months ending with the last day of the previous month, expressed as a percentage of the total number of copies of all national newspapers sold in the United Kingdom in those six months.
  - (5) For the purposes of this Part of this Schedule, the “local market share” of any local newspaper in any area at any time in a calendar month is the total number of copies of that newspaper sold in that area in the six months ending with the last day of the previous month, expressed as a percentage of the total number of copies of all local newspapers sold in that area in those six months.
  - (6) For the purposes of sub-paragraphs (4) and (5), the relevant authority may estimate the numbers of copies of any newspaper sold in the United Kingdom, or in any area, during any period in such manner, or by reference to such statistics prepared by any other person, as they think fit.
  - (7) In relation to any newspaper which is distributed free of charge rather than being sold, references in sub-paragraphs (4) to (6) to the number of copies sold shall have effect as references to the number of copies distributed.

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#### Textual Amendments

**F201** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *Other interpretative provisions*

- F202**<sup>3</sup> (1) For the purposes of this Part of this Schedule a person runs a national or local newspaper if—
- (a) he is the proprietor of the newspaper, or
  - (b) he controls a body which is the proprietor of the newspaper.,
- (2) Paragraph 1(4) in Part III of this Schedule shall have effect for the purposes of this Part of this Schedule as it has effect for the purposes of Part III.

#### Textual Amendments

**F202** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *Restrictions on common control etc.*

- F203**<sup>4</sup> (1) No person who runs a national newspaper which for the time being has, or national newspapers which for the time being together have, a national market share of 20 per cent. or more may hold a licence to provide—
- (a) a regional or national Channel 3 service or Channel 5, or
  - (b) a national or local radio service.
- (2) A licence to provide a regional Channel 3 service may not be held by a person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in the coverage area of the service.
- (3) A licence to provide digital programme services may not be held by a person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in the coverage area of any digital programme service provided under the licence.
- (4) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.

#### Textual Amendments

**F203** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**



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### *Restrictions on participation*

- <sup>F204</sup>5 (1) No proprietor of a national newspaper which for the time being has, or of national newspapers which for the time being together have, a national market share of 20 per cent. or more shall be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide any of the services specified in sub-paragraph (4).
- (2) No person who is the holder of a licence to provide any of the services specified in sub-paragraph (4) shall be a participant with more than a 20 per cent. interest in a body corporate which runs a national newspaper which has, or two or more national newspapers which together have, a national market share of 20 per cent. or more..
- (3) No body corporate in which a person who runs a national newspaper which has, or national newspapers which together have, a national market share of 20 per cent. or more is a participant with more than a 20 per cent. interest, shall be a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide any of the services specified in sub-paragraph (4).
- (4) The services referred to in sub-paragraphs (1), (2) and (3) are—
- (a) a regional or national Channel 3 service or Channel 5, and
  - (b) national or local radio services.
- (5) The Secretary of State may by order amend sub-paragraph (1), (2) or (3) by substituting a different percentage interest in a body corporate for the percentage for the time being specified there.
- (6) Any restriction imposed by this paragraph on participation in a body corporate which is the holder of a particular kind of licence shall apply equally to participation in a body corporate which controls the holder of such a licence.
- (7) Any restriction on participation imposed by this paragraph—
- (a) on the proprietor of any newspaper, or
  - (b) on the holder of any licence,
- shall apply as if he and every person connected with him were one person.

#### **Textual Amendments**

**F204** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

### *Holding of local radio licence by person running local newspapers with at least 50 per cent local market share*

- <sup>F205</sup>6 (1) A licence to provide a local radio service may not be held by a person who runs a local newspaper which has, or local newspapers which for the time being together have, a local market share of 50 per cent. or more in the coverage area of the service unless—
- (a) the service in question shares a potential audience with another local radio service, but

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- (b) he does not hold any other licence to provide a local radio service whose coverage area is to any extent the same as the coverage area of the service in question.
- (2) The reference in sub-paragraph (1) to sharing a potential audience shall be construed in accordance with paragraph 12(5) in Part III of this Schedule..
- (3) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.

#### Textual Amendments

**F205** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *Further restrictions on holding of local radio licences by a person who runs a local newspaper*

- F2067** (1) No person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in each of the relevant areas may hold any three licences to provide local radio services any of which shares a potential audience with each of the other services.
- (2) No person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in both the relevant areas may hold any two licences to provide local radio services which share a potential audience, unless one of the licences is an AM licence and the other is an FM licence.
- (3) In sub-paragraphs (1) and (2)—
- “the relevant areas” means the coverage areas of the local radio services in question,
  - references to sharing a potential audience shall be construed in accordance with sub-paragraph (5) of paragraph 12 in Part III of this Schedule, and
  - “AM licence” and “FM licence” have the same meaning as in that paragraph.
- (4) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.
- (5) This paragraph has effect subject to paragraph 8.

#### Textual Amendments

**F206** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

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*Power by order to impose different restrictions in place of paragraph 7*

- F2078** (1) The Secretary of State may by order provide that, where a digital sound programme service is provided in any area, the holding, by a person who runs a local newspaper or local newspapers as mentioned in paragraph 7(1), of two or more licences to provide in that area local radio services which for the purposes of paragraph 7 share a potential audience with each other or with each of the others shall, instead of being subject to the restrictions specified in paragraph 7, be subject to other restrictions specified in the order.
- (2) For the purposes of any order under sub-paragraph (1), a person shall be treated as holding a licence if the licence is held by a person connected with him.

**Textual Amendments**

**F207** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73 Sch. 2 Pt. III para. 11 (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, Sch. 2; S.I. 1997/1005, art. 4

*Additional restrictions applying where control of or by newspaper proprietor may operate against public interest*

- F2089** (1) A licence to provide any of the services specified in sub-paragraph (4) may not be granted to a body corporate which is, or is connected with, the proprietor of a national or local newspaper if the relevant authority determine that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.
- (2) Subject to sub-paragraph (3), a body corporate which holds a licence to provide any of the services specified in sub-paragraph (4) shall not become, or become connected with, the proprietor of a national or local newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
- (3) Sub-paragraph (2) does not apply in any case where the body corporate holding the licence—
- (a) is already the proprietor of some other national or local newspaper, or is already connected with such a proprietor, and
  - (b) does not become connected with any other person who holds a licence to provide any of the services specified in sub-paragraph (4).
- (4) The services referred to in sub-paragraphs (1) to (3) are—
- (a) a national Channel 3 service or Channel 5,
  - (b) a national radio service, and
  - (c) national digital sound programme services.
- (5) Subject to sub-paragraph (6), in this paragraph “the permitted period” means a period beginning with the day on which the licence holder becomes, or becomes connected with, the proprietor of the national or local newspaper (“the relevant day”) and ending—
- (a) in a case where the licence holder has, before the relevant day, notified the relevant authority that he will become, or become connected with, the

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- proprietor of that national or local newspaper on that day, at the end of the period of three months beginning with the relevant day, or
- (b) in any other case, at the end of the period of three months beginning with the day on which the licence holder notifies the relevant authority that he has become, or has become connected with, the proprietor of that national or local newspaper.
- (6) The relevant authority may in a particular case, after consultation with the licence holder, notify him, before the time when the permitted period would (apart from this sub-paragraph) have ended, that the permitted period in that case is to be calculated as if the references in sub-paragraph (5) to three months were references to such longer period specified in the notification as the relevant authority reasonably consider necessary in the circumstances.
- (7) Nothing in any of the preceding provisions of this Schedule shall be construed as affecting the operation of this paragraph or paragraph 10 or 11.

#### Textual Amendments

**F208** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

- <sup>F209</sup>10 (1) A licence to provide a regional Channel 3 service or a local radio service may not be granted to a body corporate which is, or is connected with, the proprietor of a national newspaper or a relevant local newspaper if the relevant authority determine that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.
- (2) Subject to sub-paragraph (3), a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service shall not become, or become connected with, the proprietor of a national newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
- (3) Sub-paragraph (2) does not apply in any case where the body corporate holding the licence—
- (a) is already the proprietor of some other national newspaper or is already connected with such a proprietor, and
- (b) does not become connected with—
- (i) any other person who holds a licence to provide a regional Channel 3 service or a local radio service, or
- (ii) any person who holds a licence to provide digital programme services and is providing a service under that licence.
- (4) Subject to sub-paragraph (5), a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service shall not become, or become connected with, the proprietor of a relevant local newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.

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- (5) Sub-paragraph (4) does not apply in any case where the body corporate which holds the licence—
- (a) is already the proprietor of some other local newspaper which is a relevant local newspaper in relation to the service referred to in that sub-paragraph, or is already connected with such a proprietor, and
  - (b) does not become connected with—
    - (i) any other person who holds a licence to provide a regional Channel 3 service or local radio service in relation to which that other local newspaper is also a relevant local newspaper, or
    - (ii) any person who holds a licence to provide digital programme services and is providing a service under that licence in relation to which that other local newspaper is also a relevant local newspaper.
- (6) For the purposes of this paragraph a local newspaper is a “relevant local newspaper”, in relation to any service, if it serves an area which is to a significant extent the same as the coverage area of the service..
- (7) In this paragraph “the permitted period” has the meaning given by paragraph 9(5) and (6).

#### Textual Amendments

**F209** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

- <sup>F210</sup>11 (1) A body corporate which holds a licence to provide digital programme services and is, or is connected with, the proprietor of a national newspaper or a relevant local newspaper, shall not begin to provide a digital programme service if the Commission determine before the end of the period specified in sub-paragraph (2) that in all the circumstances the provision of that service by that body corporate could be expected to operate against the public interest.
- (2) The period referred to in sub-paragraph (1) is the period of three months beginning with the day on which the Commission are notified pursuant to section 19(3) of the 1996 Act of an agreement to provide the digital programme service, or such longer period beginning with that day as the Commission may in a particular case, after consultation with the licence holder, notify him during those three months as being the period which they reasonably consider necessary in the circumstances.
- (3) Subject to sub-paragraph (4), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a national newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.
- (4) Sub-paragraph (3) does not apply in any case where the body corporate which is providing the digital programme service—
- (a) is already the proprietor of some other national newspaper or is already connected with such a proprietor, and
  - (b) does not become connected with—

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- (i) the holder of a licence to provide a regional Channel 3 service or a local radio service, or
  - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence.
- (5) Subject to sub-paragraph (6), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a relevant local newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.
- (6) Sub-paragraph (5) does not apply in any case where the body corporate which is providing the digital programme service—
- (a) is already the proprietor of some other local newspaper which is a relevant local newspaper in relation to the service referred to in that sub-paragraph, or is already connected with such a proprietor, and
  - (b) does not become connected with—
    - (i) the holder of a licence to provide a regional Channel 3 service or local radio service in relation to which that other local newspaper is also a relevant local newspaper, or
    - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence in relation to which that other local newspaper is also a relevant local newspaper.
- (7) In this paragraph—
- (a) references to a relevant local newspaper shall be construed in accordance with paragraph 10(6), and
  - (b) “the permitted period” has the meaning given by paragraph 9(5) and (6).

#### Textual Amendments

**F210** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

- <sup>F211</sup>12 (1) Notice may be given to the relevant authority in accordance with this paragraph of proposed arrangements which might result—
- (a) in the application of paragraph 9(2) to a body corporate which holds a licence to provide any of the services specified in paragraph 9(4),
  - (b) in the application of paragraph 10(2) or (4) to a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service, or
  - (c) in the application of paragraph 11(1), (3) or (5) to a body corporate which holds a licence to provide digital programme services.
- (2) A notice under sub-paragraph (1)—
- (a) may be given by the licence holder or any other person appearing to the relevant authority to be concerned,
  - (b) shall state that the existence of the proposal has been made public, and
  - (c) shall be in such form as the relevant authority may require.



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- (3) The relevant authority may, at any time before making a determination under this paragraph, require the person who gave the notice to provide them with such further information with respect to the notified arrangements as they think fit.
- (4) The relevant authority shall, as soon as reasonably practicable, determine whether in all the circumstances, if the notified arrangements were carried into effect, the continued holding of the licence by the body corporate could be expected to operate against the public interest.
- (5) If—
- (a) the relevant authority determine, in relation to any notified arrangements, that the fact referred to in sub-paragraph (4) could not be expected to operate against the public interest, and
  - (b) the notified arrangements are carried into effect within the period of 12 months beginning with the date of the determination,
- the relevant authority may not make any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) arising out of the carrying into effect of the notified arrangements.
- (6) Sub-paragraph (5) does not prevent any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) being made if—
- (a) any information given to the relevant authority in respect of the notified arrangements by the person who gave the notice is in any material respect false or misleading, or
  - (b) since the making of the determination there has been a material change of circumstances (other than such a change of which notice was given to the relevant authority under sub-paragraph (3) before the making of the determination).
- (7) In this paragraph “the notified arrangements” means the arrangements mentioned in the notice under sub-paragraph (1) or arrangements not differing from them in any material respect.

#### Textual Amendments

**F211** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

- <sup>F212</sup>13 (1) The matters to which the relevant authority shall have regard in determining, for the purposes of paragraph 9, 10, 11 or 12, whether the holding of a licence by a body corporate which is, or is connected with, the proprietor of a newspaper operates, or could be expected to operate, against the public interest include—
- (a) the desirability of promoting—
    - (i) plurality of ownership in the broadcasting and newspaper industries, and
    - (ii) diversity in the sources of information available to the public and in the opinions expressed on television or radio or in newspapers,
  - (b) any economic benefits (such as, for example, technical development or an increase in employment or in the value of goods or services exported) that might be expected to result from the holding of the licence by that body but could not be expected to result from the holding of the licence by a body

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- corporate which was not, and was not connected with, the proprietor of a newspaper, and
- (c) the effect of the holding of the licence by that body on the proper operation of the market within the broadcasting and newspaper industries or any section of them
- (2) References in paragraphs 9, 10, 11 and 12 to the public interest include references to the public interest within any area of the United Kingdom.

#### Textual Amendments

**F212** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

- <sup>F213</sup>14 In relation to any determination under paragraph 11(1), (3) or (5), references in paragraphs 12 and 13 to the holding of the licence shall have effect as references to the provision of the service.

#### Textual Amendments

**F213** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *Restricted television services*

- <sup>F214</sup>15 (1) The Secretary of State may by order—
- (a) prescribe restrictions on the holding of one or more licences to provide restricted television services by a person who runs a national or local newspaper, and
- (b) apply any of the provisions of paragraphs 9 to 13, with such modifications as may be specified in the order, in relation to the holding of a licence to provide a restricted television service.
- (2) Any order under sub-paragraph (1) may provide that, for the purposes of any provision of the order, a person is to be treated as holding a licence if the licence is held by a person connected with him.
- (3) In this paragraph “restricted television service” means a restricted service within the meaning of Part I of this act.

#### Textual Amendments

**F214** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**



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## PART V

### RESTRICTION ON HOLDING OF LICENCES BY OPERATORS OF PUBLIC TELECOMMUNICATION SYSTEMS

The Secretary of State may by order specify categories of licences granted by the Commission or the Authority which may not be held by all or any of the following, namely—

- (a) a national public telecommunications operator or a national public telecommunications operator of any description specified in the order;
- (b) a person who controls such an operator;
- (c) an associate of such an operator or of a person falling within sub-paragraph (b);
- (d) a body which is controlled by such an operator or by an associate of such an operator.

In this paragraph “national public telecommunications operator” means a public telecommunications operator (within the meaning of the <sup>M71</sup>Telecommunications Act 1984) who is authorised to run a telecommunication system for the whole, or substantially the whole, of the United Kingdom.

#### Marginal Citations

M71 1984 c. 12.

#### Marginal Citations

M71 1984 c. 12.

## SCHEDULE 3

Section 23.

### THE CHANNEL FOUR TELEVISION CORPORATION: SUPPLEMENTARY PROVISIONS

#### *Status and capacity*

- 1 (1) The Corporation shall be a body corporate.
- (2) The Corporation shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the Corporation as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including the borrowing of money.
- [<sup>F215</sup>(4) Section 24(5)(b) of this Act shall not be taken to limit the Corporation’s power by virtue of sub-paragraph (3) to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under section 24(1) or (5) (a).]

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#### Textual Amendments

**F215** Sch. 3 para. 1(4) inserted (1.10.1996) by 1996 c. 55, s. 84(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

#### *Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Corporation so long as he is—
- (a) a governor or employee of the BBC;
  - (b) a member or employee of the Commission;
  - (c) a member or employee of the Radio Authority established by this Act; [<sup>F216</sup>or
  - (d) a member or employee of the Broadcasting Standards Commission.]
- (2) Before appointing a person to be a member of the Corporation, the Commission shall satisfy themselves that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Corporation; and the Commission shall also satisfy themselves from time to time with respect to every member of the Corporation that he has no such interest.
- (3) Any person who is, or whom the Commission propose to appoint to be, a member of the Corporation shall, whenever requested by the Commission to do so, furnish them with such information as they consider necessary for the performance by them of their duties under sub-paragraph (2).

#### Textual Amendments

**F216** Sch. 3 para. 2(1)(d) and the word “or” immediately preceding it substituted (1.4.1997) for Sch. 3 para. 2(1)(d)(e) by 1996 c. 55, s. 148(1), Sch. 10 Pt. II para. 23 (with s. 43(1)(6)); S.I. 1997/1005, art. 4

#### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Corporation shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Corporation for more than five years at a time.
- (3) Any member of the Corporation may at any time resign his office by notice to the Commission.
- (4) This paragraph does not apply in relation to ex-officio members of the Corporation.

#### *Remuneration and pensions of members*

- 4 (1) The Corporation may pay —
- (a) to each member other than an ex-officio member such remuneration and allowances, and
  - (b) to each ex-officio member such allowances,
- as the Commission may determine.

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- (2) The Corporation may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Commission may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Commission that there are special circumstances which make it right for him to receive compensation, the Corporation may make a payment to him of such amount as the Commission may determine.
- (4) Sub-paragraphs (2) and (3) do not apply in relation to ex-officio members of the Corporation.
- (5) The approval of the Treasury shall be required for any determination under this paragraph other than a determination under sub-paragraph (1) having effect in relation to an ex-officio member of the Corporation.

*Disqualification of members of Corporation for  
House of Commons and Northern Ireland Assembly*

- 5 In Part II of Schedule 1 to the <sup>M72</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Channel Four Television Corporation” and a corresponding amendment shall be made in Part II of Schedule 1 to the

M73

Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

M72 1975 c. 24.

M73 1975 c. 25.

*Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Corporation and the arrangements relating to their meetings shall be such as the Corporation may determine.
- (2) The arrangements may, with the approval of the Commission, provide for the discharge, under the general direction of the Corporation, of any of the Corporation’s functions by a committee or by one or more of the members or employees of the Corporation.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Corporation shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Corporation, or of any of their committees, with respect to that matter.

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- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Corporation at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
  - (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Corporation by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
  - (4) A member need not attend in person at a meeting of the Corporation in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
  - (5) In this paragraph references to a meeting of the Corporation include references to a meeting of any of their committees.
- 8        The validity of any proceedings of the Corporation shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

#### *Employees of the Corporation*

- 9        (1) The Corporation shall appoint a chief executive of the Corporation, and may appoint such other employees as they may determine.
- (2) If the Corporation determine to do so in the case of any of their employees, the Corporation shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Corporation may determine.
- (3) If any employee of the Corporation—
- (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the Corporation other than an ex-officio member,
- he may, if the Commission so determine, be treated for the purposes of the pension scheme as if his service as a member of the Corporation were service as an employee of the Corporation.

#### *Authentication of Corporation's seal*

- 10        The application of the seal of the Corporation shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### *Presumption of authenticity of documents issued by Corporation*

- 11        Any document purporting to be an instrument issued by the Corporation and to be duly executed under the seal of the Corporation or to be signed on behalf of the Corporation shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

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### *Accounts and audit*

- 12 (1) The Corporation shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The accounts of the Corporation shall be audited by auditors to be appointed by the Corporation with the approval of the Secretary of State.
- [<sup>F217</sup>(3) A person shall not be qualified to be appointed as a auditor in pursuance of subparagraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Corporation shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Corporation; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Corporation.

#### **Textual Amendments**

**F217** Sch. 3 para. 12(3) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para.77(3).

### *Annual reports*

- 13 (1) As soon as possible after the end of every financial year, the Corporation shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Corporation) as the Secretary of State may from time to time direct.

## SCHEDULE 4

Section 39.

### REFERENCES WITH RESPECT TO NETWORKING ARRANGEMENTS

#### *Report by Director on reference under s. 39*

- 1 (1) Where any reference is made to the Director General of Fair Trading (“the Director”) under section 39(12)(a), it shall be the duty of the Director—
- (a) to publish a notice of the reference, together with a description of the arrangements to which it relates, in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by or be likely to have an interest in it;
  - (b) to consider whether those arrangements satisfy the competition test in accordance with paragraph 2; and

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- (c) to make a report on those arrangements within the period of six months beginning with the date of publication of the notice referred to in paragraph (a).
- (2) If, while the Director is proceeding with any such reference, he is informed in accordance with section 39(12)(b) of this Act of any modification to the arrangements in question, he may, if he thinks fit, treat the reference as varied so far as is necessary to take account of the modification; and, if he does so, references to those arrangements in sub-paragraph (1)(b) and (c) shall accordingly be construed as references to those arrangements as modified.
- (3) The Director's report on any arrangements shall contain his conclusions on the question whether the arrangements satisfy the competition test and may contain such an account of his reasons for those conclusions as is, in his opinion, expedient for facilitating a proper understanding of those conclusions.
- (4) If those conclusions are to the effect that the arrangements do not satisfy the competition test, the report shall specify the modifications which the Director considers would, if incorporated in the arrangements, result in them satisfying that test.
- (5) Subsections (6) and (7) of section 186 of this Act shall have effect in relation to any report made by the Director under this paragraph as they have effect in relation to any report made by him under that section.
- (6) The Director shall send a copy of any report made by him under this paragraph to the Commission and to every holder of a regional Channel 3 licence.

*The competition test*

- 2 (1) For the purposes of this Schedule arrangements satisfy the competition test if—
  - (a) they do not have, and are not intended or likely to have, the effect of restricting, distorting or preventing competition in connection with any business activity in the United Kingdom; or
  - (b) they do have, or are intended or likely to have, such an effect but they would satisfy the criteria set out in paragraph 3 of Article 85 of the E.E.C. Treaty (agreements contributing to improving the production or distribution of goods or to promoting technical or economic progress) if that paragraph were to be construed as relating only to the effects within the United Kingdom of agreements between undertakings.
- (2) For the purposes of sub-paragraph (1)(b) any arrangements made by the Commission shall be treated as if they constituted an agreement between undertakings within the meaning of Article 85(3).
- (3) In determining whether any arrangements would satisfy the criteria referred to in that provision, the Director or, as the case may be, the Monopolies and Mergers Commission (“the MMC”) shall have regard to any principles laid down by or decision of the European Court, or any court attached thereto, so far as relevant to the construction of Article 85(3).

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*Duty to modify arrangements in consequence of Director's report*

- 3 (1) Where the Director's report on any arrangements specifies any modifications in pursuance of paragraph 1(4), then (subject to sub-paragraph (2))—
- (a) if the arrangements were made by the holders of regional Channel 3 licences, the Commission shall notify all the holders of such licences of the period within which the modifications are to be incorporated in the arrangements, being such period as may be determined by the Director after consulting the Commission; and
  - (b) if the arrangements were made by the Commission, the Commission shall—
    - (i) incorporate those modifications in the arrangements with effect from such date as may be so determined, and
    - (ii) notify all the holders of such licences of the arrangements as modified.
- (2) If a reference relating to the Director's report is made to the MMC under paragraph 4 and they have begun to proceed with it in accordance with that paragraph, the modifications referred to in sub-paragraph (1) above shall not be required to be incorporated in the arrangements by virtue of that sub-paragraph—
- (a) if the reference is in respect of the arrangements as a whole, or
  - (b) (in any other case) to the extent that the modifications fall to be considered by the MMC on the reference.
- (3) Each regional Channel 3 licence shall include such conditions as appear to the Commission to be appropriate in consequence of this paragraph.

*References to MMC*

- 4 (1) Where the Director's report on any arrangements contains any such conclusions as are mentioned in paragraph 1(4), the Commission or the holder of any regional Channel 3 licence may, within the relevant period, make to the MMC a reference which is so framed as to require the MMC to investigate and report on either or both of the following questions, namely—
- (a) whether the arrangements, or any particular provisions of the arrangements, satisfy the competition test;
  - (b) whether the modifications specified in the report, or any particular modification so specified, ought to be incorporated in the arrangements for the purpose of enabling them to satisfy that test.
- (2) In sub-paragraph (1) "the relevant period" means the period of four weeks beginning with the date of publication of the Director's report.
- (3) Where a reference is made to the MMC under this paragraph, the MMC shall (subject to sub-paragraphs (4) and (5))—
- (a) publish a notice of the reference in such manner as they consider most suitable for bringing it to the attention of persons who, in the opinion of the MMC, would be affected by or be likely to have an interest in it; and
  - (b) make a report on the reference within the period of three months beginning with the date of publication of the notice referred to in paragraph (a).

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- (4) The period referred to in sub-paragraph (3)(b) may be extended by the MMC by a further period of three months if they consider it necessary to do so.
- (5) The MMC shall not be required to proceed with any reference under this paragraph which appears to them to be frivolous or vexatious; but, where they decide not to proceed with any such reference, they shall publish a notice of their decision in such manner as they consider appropriate.
- (6) If—
- (a) while the MMC are proceeding with any reference under this paragraph, the Director is informed in accordance with section 39(12)(b) of this Act of any modification to the arrangements in respect of which the reference has been made, and
  - (b) it appears to him that the modification is material to any issue falling to be considered by the MMC on the reference,
- he shall refer the modification to the MMC, who may, if they think fit, treat the reference as varied so far as is necessary to take account of the modification; and, if they do so, references to those arrangements in paragraphs 5 and 6 shall accordingly be construed as references to those arrangements as modified.
- (7) The following provisions, namely—
- (a) sections 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the <sup>M74</sup>Fair Trading Act 1973,
  - (b) Part II of Schedule 3 to that Act (performance of functions of MMC), and
  - (c) section 24 of the <sup>M75</sup>Competition Act 1980 (modification of provisions about performance of such functions),
- shall apply in relation to references under this paragraph as if—
- (i) the functions of the MMC in relation to such references were functions under the Fair Trading Act 1973,
    - (ii) the expression “merger reference” included a reference under this paragraph,
    - (iii) in the said section 81, subsections (3) and (4) were omitted, and
    - (iv) in the said Schedule 3, paragraphs 11 and 16(2) were omitted.

#### Marginal Citations

**M74** 1973 c. 41

**M75** 1980 c. 21

VALID FROM 29/12/2003

#### *Further provision about references under paragraph 4*

[<sup>F218</sup>4A(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of references under paragraph 4 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);



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- (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1), have effect in relation to those sections as applied by virtue of that sub-paragraph.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that sub-paragraph.]

#### Textual Amendments

**F218** Sch. 4 para. 4A inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(e)**

#### *Report by MMC on reference under paragraph 4*

- 5
- (1) The MMC’s report on a reference under paragraph 4 shall contain their conclusions on the question or questions comprised in the reference, together with such an account of their reasons for those conclusions as is, in their opinion, expedient for facilitating a proper understanding of those conclusions.
  - (2) If the MMC’s conclusions on any such question as is mentioned in paragraph 4(1)(a) are to the effect that the arrangements, or any particular provisions of the arrangements, do not satisfy the competition test, the report shall specify the modifications which the MMC consider would, if incorporated in the arrangements, result in the arrangements or (as the case may be) the provisions in question satisfying that test (and those modifications may to any extent differ from those specified by the Director in pursuance of paragraph 1(4)).

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- (3) If the MMC's conclusions on any such question as is mentioned in paragraph 4(1) (b) are to the effect that any modification so specified by the Director ought to be incorporated for the purpose mentioned in that provision, the MMC shall (unless the report specifies a like modification in pursuance of sub-paragraph (2) above) affirm that modification in the report; but, if their conclusions on any such question are to the effect that any such modification ought not to be so incorporated, the report shall specify such other modification (if any) as appears to them to be appropriate for that purpose.
- (4) The MMC shall—
- (a) publish any report made by them under this paragraph in such manner as they consider appropriate; and
  - (b) send a copy of it to the Director, to the Commission and to every holder of a regional Channel 3 licence.
- (5) Section 82 of the <sup>M76</sup>Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the MMC on references under paragraph 4 as it applies in relation to reports of the MMC under that Act.

**Marginal Citations**

**M76** 1973 c. 41

*Duty to modify arrangements in consequence of MMC's report*

- 6 (1) Where the MMC's report on any reference under paragraph 4 specifies any modifications or modification in pursuance of paragraph 5(2) or (3), or any modification specified by the Director is affirmed in such a report, then—
- (a) if the arrangements to which the report relates were made by the holders of regional Channel 3 licences, the Commission shall notify all the holders of such licences of the period within which any such modifications or modification are or is to be incorporated in the arrangements, being such period as may be determined by the Director after consulting the Commission; and
  - (b) if those arrangements were made by the Commission, the Commission shall—
    - (i) incorporate any such modifications or modification in the arrangements with effect from such date as may be so determined, and
    - (ii) notify all the holders of such licences of the arrangements as modified.
- (2) Paragraph 3(3) shall have effect in relation to this paragraph as it has effect in relation to paragraph 3.

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#### *Power of Director to review previous decision with respect to arrangements*

- 7 (1) The Director may at any time after making a report under paragraph 1 with respect to any arrangements—
- (a) consider afresh whether the arrangements (as for the time being in force) satisfy the competition test; and
  - (b) make a further report on those arrangements in accordance with sub-paragraphs (3) to (5) of paragraph 1.
- (2) If, while any arrangements are under consideration by the Director under this paragraph, he is informed in accordance with section 39(12)(b) of this Act of any modification of those arrangements, he may, if he thinks fit, decide to vary the matters under consideration so far as is necessary to take account of the modification; and, if he does so, references to those arrangements in sub-paragraph (1)(a) and (b) above shall accordingly be construed as references to those arrangements as modified.
- (3) The Director shall send a copy of any report made by him under this paragraph to the Commission and to every holder of a regional Channel 3 licence.
- (4) Paragraphs 2 to 6 shall have effect in relation to any such report as they have effect in relation to a report made by the Director under paragraph 1.

#### *Power to obtain information*

- 8 (1) The Director may serve on any person a notice requiring him, at a time and a place specified in the notice—
- (a) to produce to the Director such documents specified or described in the notice (being documents in the custody or under the control of that person), or
  - (b) to furnish him, in a form specified in the notice, with such estimates, returns or other information specified or described in it,
- as he may require for the purpose of making any report under this Schedule.
- (2) A person shall not by virtue of sub-paragraph (1) be compelled—
- (a) to produce any document which he could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session, or
  - (b) in complying with any requirement for the furnishing of evidence, to give any information which he could not be compelled to give in evidence in such proceedings.
- (3) In section 85 of the <sup>M77</sup>Fair Trading Act 1973, as amended by the <sup>M78</sup>Companies Act 1989, subsections (6) to (8) (enforcement of notices requiring production of documents) shall apply in relation to a notice under sub-paragraph (1) above as they apply in relation to a notice under subsection (1) of that section, but as if, in subsection (7) of that section, there were substituted “the Director” for the words from “any one” to “the Commission”.
- (4) In that Act, as so amended, section 93B (false or misleading information) shall apply in relation to the furnishing of information to the Director or the MMC in connection with his or their functions under this Schedule as it applies in relation to the furnishing of information as mentioned in subsection (1)(a) or (b) of that section.

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### Marginal Citations

**M77** 1973 c. 41

**M78** 1989 c. 40.

VALID FROM 29/12/2003

### Enforcement

<sup>F219</sup>8A(1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 8(1).

(2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.

(3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.

(4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 8(1).

(5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.

(6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.

[ Where the defaulter is a partnership constituted under the law of Scotland, the court <sup>F220</sup>(6A) may punish any partner of the defaulter as it would have been able to punish him had he been guilty of contempt of court.]

(7) In this section “the court”—

(a) in relation to England and Wales or Northern Ireland, means the High Court, and

(b) in relation to Scotland, means the Court of Session.]

### Textual Amendments

**F219** Sch. 4 paras. 8A-8C inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(j)**

**F220** Sch. 4 para. 8A(6A) inserted (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 14(3)**

VALID FROM 29/12/2003

<sup>F221</sup>[8B(1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 8(1).

**Status:** Point in time view as at 11/07/1997. This version of this Act contains provisions that are not valid for this point in time.

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- (2) A person who commits an offence under sub-paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

#### Textual Amendments

**F221** Sch. 4 paras. 8A-8C inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(j)**

VALID FROM 29/12/2003

#### *False or misleading information*

- <sup>F222</sup>8C(1) A person commits an offence if—
- (a) he supplies any information to the OFT or the Competition Commission in connection with any of their functions under this Schedule;
  - (b) the information is false or misleading in a material respect; and
  - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (2) A person commits an offence if he—
- (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
  - (b) recklessly supplies any information to another person which is false or misleading in a material respect;
- knowing that the information is to be used for the purpose of supplying information to the OFT or the Competition Commission in connection with any of their functions under this Schedule.
- (3) A person who commits an offence under sub-paragraph (1) or (2) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) This paragraph shall not have effect in relation to the supplying of information to the Competition Commission in connection with its functions under any provision of the Enterprise Act 2002 as applied by virtue of paragraph 4A.]

#### Textual Amendments

**F222** Sch. 4 paras. 8A-8C inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(j)**

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### *Duty of Director to assist MMC*

- 9 (1) It shall be the duty of the Director, for the purpose of assisting the MMC in carrying out an investigation on a reference made to them under paragraph 4, to give to the MMC—
- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either—
    - (i) requested by the MMC for that purpose, or
    - (ii) information which in his opinion it would be appropriate for that purpose to give to the MMC without any such request, and
  - (b) any other assistance which the MMC may require, and which it is within his power to give, in relation to any such matters;
- and the MMC shall, for the purpose of carrying out any such investigation, take account of any information given to them for that purpose under this sub-paragraph.
- (2) Sub-paragraph (1) shall not affect the operation of paragraph 4(6).

### *Interpretation*

- 10 In this Schedule—
- “the Director” means the Director General of Fair Trading; and
  - “the MMC” means the Monopolies and Mergers Commission.

## SCHEDULE 5

Section 50.

### SPECIAL PROVISIONS RELATING TO PUBLIC TELETEXT SERVICE

#### *The relevant service*

- 1 In this Schedule “the relevant service” means the teletext service referred to in section 49(2) of this Act.

#### *Applications for licence to provide the relevant service*

- 2 (1) Where any such application as is mentioned in section 50(3) of this Act is made in respect of a licence to provide the relevant service—
- (a) the application shall be accompanied by the applicant’s proposals for providing a service that would comply with the requirements specified in paragraph 3(2) below, and
  - (b) section 50(4) shall have effect as if the reference to section 50(3)(b) or (d) included a reference to paragraph (a) above.
- (2) The Commission shall, when publishing a notice under section 50(1) in respect of the grant of a licence to provide the relevant service, publish with the notice general guidance to applicants for the licence which contains examples of the kinds of material whose inclusion in the service proposed by any such applicant under sub-

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paragraph (1)(a) above would be likely to result in a finding by the Commission that the service would comply with the requirements specified in paragraph 3(2) below.

- (3) The notice to be published by the Commission under section 50(6) in respect of the applications made in pursuance of such a notice as is mentioned in sub-paragraph (2) above shall include the proposals submitted by each of the applicants under sub-paragraph (1)(a) above.
- (4) The Commission shall also publish in such manner as they consider appropriate a notice—
  - (a) inviting representations to be made to them with respect to any matters published by them in accordance with section 50(6)(c) or sub-paragraph (3) above, and
  - (b) specifying the manner in which, and the time by which, any such representations are to be so made.
- (5) The notice referred to in sub-paragraph (4) above shall be published as soon as reasonably practicable after the date specified in the notice under section 50(1) as the closing date for applications for the licence.

#### *Consideration of applications and award of licence*

- 3 (1) Where a person has, in accordance with section 50 of this Act and paragraph 2 above, made an application for a licence to provide the relevant service, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 51(3) and (4) of this Act unless it appears to them that his proposed service would comply with the requirements specified in sub-paragraph (2).
- (2) Those requirements are—
  - (a) that the service includes a sufficient amount of news items which are of high quality and deal with both national and international matters;
  - (b) that the service includes a sufficient amount of information which is of particular interest to persons living within different areas for which the service is provided; and
  - (c) that (taken as a whole) the service includes a sufficient amount of information (other than news) which is calculated to appeal to a wide variety of tastes and interests.
- (3) Section 51(1) shall accordingly have effect in relation to a licence to provide the relevant service as if the reference to the requirements of section 51(1)(a) and (b) included a reference to the requirements specified in sub-paragraph (2) above.
- (4) In deciding whether an applicant's proposed service would comply with those requirements, the Commission shall take into account any representations made to them in pursuance of paragraph 2(4)(b) above.
- (5) Where the Commission have awarded a licence to provide the relevant service to any person in accordance with section 51(3) and (4), the matters to be published by them in accordance with section 17(11)(a) and (12) of this Act (as they have effect in accordance with section 51(3) and (4)) shall include the name of every other applicant in whose case it appeared to them that his proposed service would comply with the requirements specified in sub-paragraph (2) above.

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*Conditions requiring licence holder to deliver promised service*

- 4 (1) A licence to provide the relevant service shall include such conditions as appear to the Commission to be appropriate for securing that the service provided under the licence accords with the proposals submitted by the licence holder under paragraph 2(1)(a) above.
- (2) Any conditions imposed in pursuance of sub-paragraph (1) above may be varied by the Commission with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).

*Failure to begin providing licensed service and financial penalties on revocation of licence*

- 5 (1) Subject to sub-paragraph (2), section 18 of this Act shall apply in relation to a licence to provide the relevant service as it applies in relation to a licence to provide a Channel 3 service.
- (2) In the application of that section in relation to a licence to provide the relevant service—
- (a) the reference in section 18(1) to section 17 shall be construed as a reference to that section as applied by section 51(3) of this Act; and
  - (b) the reference in section 18(4) to section 19(2) to (6) shall be construed as a reference to section 52(2) of this Act.

*Renewal of licence to provide relevant service*

- 6 Section 53(5) of this Act shall have effect in relation to an application for the renewal of a licence to provide the relevant service as if, in addition to the grounds for refusing an application which are specified in paragraphs (a) to (c) of that provision, there were specified the following ground, namely that the Commission are not satisfied that the applicant would, if his licence were renewed, provide a service which complied—
- (a) with the conditions included in the licence in pursuance of paragraph 4 above (whether as originally imposed or as varied under sub-paragraph (2) of that paragraph), or
  - (b) with the requirements specified in paragraph 3(2) above.

*Additional methods of enforcement of licence to provide relevant service*

- 7 (1) Subject to sub-paragraph (2), sections 40 and 41 of this Act shall apply in relation to a licence to provide the relevant service as they apply in relation to a licence to provide a Channel 3 service.
- (2) In the application of those sections in relation to a licence to provide the relevant service—
- (a) any reference in section 40(4) to a programme shall be construed as a reference to an item; and
  - (b) section 41 shall have effect with the omission of subsections (1)(a) and (2).



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## SCHEDULE 6

Section 56.

### THE WELSH AUTHORITY: SUPPLEMENTARY PROVISIONS

#### *Status and capacity*

- 1 (1) The Welsh Authority (in this Schedule referred to as “the Authority”) shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (2) It shall be within the capacity of the Authority as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including the borrowing of money.
- [<sup>F223</sup>(3) Section 57(1A)(b) of this Act shall not be taken to limit the Authority’s power by virtue of sub-paragraph (2) to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under section 57(1) or (1A)(a).]

#### **Textual Amendments**

**F223** Sch. 6 para. 1(3) inserted (1.10.1996) by 1996 c. 55, s. 84(4); S.I. 1996/2120, art. 4, Sch. 1

#### *Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Authority so long as he is—
- (a) a member or employee of the Radio Authority established by this Act; [<sup>F224</sup>or
  - (b) a member or employee of the Broadcasting Standards Commission.]
- (2) The members of the Authority shall not at any time include—
- (a) more than one person who is either a governor or an employee of the BBC; or
  - (b) more than one person who is either a member or an employee of the Commission.
- (3) Before appointing a person to be a member of the Authority, the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Authority; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the Authority that he has no such interest.
- (4) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the Authority shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (3).

#### **Textual Amendments**

**F224** Sch. 6 para. 2(1)(b) and word “or” immediately preceding it substituted (1.4.1997) for Sch. 6 para. 2(1)(b)(c) by 1996 c. 55, s. 148(1), Sch. 10 Pt. II para. 24 (with s. 43(1)(6)); S.I. 1997/1005, art. 4

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### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Authority shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Authority for more than five years at a time.
- (3) Any member of the Authority may at any time resign his office by notice in writing to the Secretary of State.

### *Remuneration and pensions of members*

- 4 (1) The Authority may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The Authority may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Authority may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

### *Disqualification of members of Authority for House of Commons*

- 5 In Part II of Schedule 1 to the <sup>M79</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“Sianel Pedwar Cymru”.

#### **Marginal Citations**

**M79** 1975 c. 24.

### *Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Authority and the arrangements relating to their meetings shall be such as the Authority may determine.
- (2) The arrangements may provide for the discharge, under the general direction of the Authority, of any of the Authority’s functions by a committee or by one or more of the members or employees of the Authority.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Authority shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and

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- (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Authority, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Authority at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Authority by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Authority in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Authority include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Authority shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

#### *Employees of the Authority*

- 9 (1) The Authority shall appoint a secretary and may appoint such other employees as they may determine.
- (2) If the Authority determine to do so in the case of any of their employees, the Authority shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Authority may determine.
- (3) If any employee of the Authority—
- (a) is a participant in any pension scheme applicable to his employment, and
- (b) becomes a member of the Authority,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the Authority were service as an employee of the Authority.

#### *Authentication of Authority's seal*

- 10 The application of the seal of the Authority shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### *Presumption of authenticity of documents issued by Authority*

- 11 Any document purporting to be an instrument issued by the Authority and to be duly executed under the seal of the Authority or to be signed on behalf of the Authority shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

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### *Accounts and audit*

- 12 (1) The Authority shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- [<sup>F225</sup>(1A) The statement of accounts must deal separately with the public service fund referred to in section 61A of this Act and with the general fund referred to in subsection (5) (b) of that section.]
- (2) The accounts of the Authority shall be audited by auditors to be appointed by the Authority with the approval of the Secretary of State.
- [<sup>F226</sup>(3) A person shall not be qualified to be appointed as a auditor in pursuance of subparagraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Authority shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Authority; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Authority.

#### **Textual Amendments**

**F225** Sch. 6 para. 12(1A) inserted (1.10.1996) by 1996 c. 55, s. 81(2); S.I. 1996/2120, art. 4, Sch. 1

**F226** Sch. 6 para. 12(3) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 77(4)

### *Annual reports*

- 13 (1) As soon as possible after the end of every financial year, the Authority shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Authority) as the Secretary of State may from time to time direct.

### *Advisory committees*

- 14 The Authority may appoint, or arrange for the assistance of, advisory committees to give advice to them on such matters relating to the Authority's functions as the Authority may determine.

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## SCHEDULE 7

Sections 67, 77 and 121.

### QUALIFYING REVENUE: SUPPLEMENTARY PROVISIONS

#### PART I

##### QUALIFYING REVENUE FOR PURPOSES OF PART I OR II OF THIS ACT

###### *Computation of qualifying revenue*

- 1 (1) It shall be the duty of the Commission to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining the qualifying revenue in relation to a person—
- (a) for any accounting period of his, or
  - (b) for any year,
- for the purposes of any provision of Part I or Part II of this Act.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Commission shall consult the Secretary of State and the Treasury.
- (4) The Commission shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

###### *Disputes*

- 2 (1) For the purposes of any provision of Part I or Part II of this Act—
- (a) the amount of the qualifying revenue in relation to any person for any accounting period of his, or (as the case may be) for any year, or
  - (b) the amount of any payment to be made to the Commission by any person in respect of any such revenue, or of an instalment of any such payment,
- shall, in the event of a disagreement between the Commission and that person, be the amount determined by the Commission.
- (2) No determination of the Commission under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

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## PART II

### QUALIFYING REVENUE FOR PURPOSES OF PART III OF THIS ACT

#### *Computation of qualifying revenue*

- 1 (1) It shall be the duty of the Authority to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining the qualifying revenue for any accounting period of a licence holder for the purposes of any provision of Part III of this Act.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Authority shall consult the Secretary of State and the Treasury.
- (4) The Authority shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

#### *Disputes*

- 2 (1) For the purposes of any provision of Part III of this Act—
- (a) the amount of the qualifying revenue for any accounting period of a person, or
  - (b) the amount of any payment to be made to the Authority by any person in respect of any such revenue, or of an instalment of any such payment,
- shall, in the event of a disagreement between the Authority and that person, be the amount determined by the Authority.
- (2) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

## SCHEDULE 8

Section 83.

### THE RADIO AUTHORITY: SUPPLEMENTARY PROVISIONS

#### *Status and capacity*

- 1 (1) The Authority shall be a body corporate.
- (2) The Authority shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.

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- (3) It shall be within the capacity of the Authority as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including (subject to sub-paragraph (4)) the borrowing of money.
- (4) The power of the Authority to borrow money (otherwise than under paragraph 13) shall not be exercised by them except with the consent of, or in accordance with a general authority given by, the Secretary of State.

#### *Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Authority so long as he is—
  - (a) a governor or employee of the BBC;
  - (b) a member or employee of the Channel Four Television Corporation established by this Act;
  - (c) a member or employee of the Welsh Authority; [<sup>F227</sup>or
  - (e) a member or employee of the Broadcasting Standards Commission.]
- (2) Before appointing a person to be a member of the Authority, the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Authority; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the Authority that he has no such interest.
- (3) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the Authority shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (2).

#### **Textual Amendments**

**F227** Sch. 8 para. 2(1)(d) and word “or” immediately preceding it substituted (1.4.1997) for Sch. 8 para. 2(1)(d)(e) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 25** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**

#### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Authority shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Authority for more than five years at a time.
- (3) Any member of the Authority may at any time resign his office by notice in writing to the Secretary of State.

#### *Remuneration and pensions of members*

- 4 (1) The Authority may pay to each member such remuneration and allowances as the Secretary of State may determine.

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- (2) The Authority may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Authority may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

*Disqualification of members of Authority for House  
of Commons and Northern Ireland Assembly*

- 5 In Part II of Schedule 1 to the <sup>M80</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Radio Authority” and a corresponding amendment shall be made in Part II of Schedule 1 to the

<sup>M81</sup>

Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M80** 1975 c. 24.

**M81** 1975 c. 25.

*Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Authority and the arrangements relating to their meetings shall be such as the Authority may determine.
- (2) The arrangements may provide for the discharge, under the general direction of the Authority, of any of the Authority’s functions by a committee or by one or more of the members or employees of the Authority.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Authority shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
  - (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Authority, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Authority at which all of the other members present resolve that the member’s interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Authority by a member to the effect that he is a member of a specified company or



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firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as sufficient disclosure of his interest in relation to any such matter.

- (4) A member need not attend in person at a meeting of the Authority in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Authority include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Authority shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

#### *Employees of the Authority*

- 9 (1) The Authority shall appoint a secretary and may appoint such other employees as they may determine.
- (2) If the Authority determine to do so in the case of any of their employees, the Authority shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Authority may determine.
- (3) If any employee of the Authority—
- (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the Authority,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the Authority were service as an employee of the Authority.

#### *Authentication of Authority's seal*

- 10 The application of the seal of the Authority shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### *Presumption of authenticity of documents issued by Authority*

- 11 Any document purporting to be an instrument issued by the Authority and to be duly executed under the seal of the Authority or to be signed on behalf of the Authority shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

#### *Finances of Authority*

- 12 (1) It shall be the duty of the Authority so to conduct their affairs that their revenues become at the earliest possible date, and continue thereafter, at least sufficient to enable them to meet their obligations and discharge their functions under this Act.
- (2) Any excess of the Authority's revenues for any financial year over the sums required by them for that year for meeting their obligations and discharging their functions under this Act shall be applied by the Authority in such manner as the Secretary of

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State may direct with the approval of the Treasury and after consultation with the Authority.

- (3) A direction under sub-paragraph (2) may require the whole or any part of any excess of the revenues of the Authority to be paid into the Consolidated Fund.

#### *Advances to Authority*

- 13 (1) For the purpose of—
- (a) furnishing the Authority with working capital, or
  - (b) enabling them to meet any capital expenditure,
- the Secretary of State may, with the consent of the Treasury, make advances to the Authority out of money provided by Parliament.
- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Authority under this paragraph shall not at any time exceed £3 million.
- (3) Any sums advanced under this paragraph shall be repaid to the Secretary of State at such times and by such methods, and interest on those sums shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.

#### *Accounts and audit*

- 14 (1) The Authority shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The accounts of the Authority shall be audited by auditors to be appointed by the Authority with the approval of the Secretary of State.
- [<sup>F228</sup>(3) A person shall not be qualified to be appointed as an auditor in pursuance of sub-paragraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Authority shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Authority; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Authority.

#### **Textual Amendments**

**F228** Sch. 8 para. 14(3) substituted (01.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 77(5).

#### *Annual reports*

- 15 (1) As soon as possible after the end of every financial year, the Authority shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.

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- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Authority) as the Secretary of State may from time to time direct.

#### *Advisory committees*

- 16 The Authority may appoint, or arrange for the assistance of, advisory committees to give advice to them on such matters relating to the Authority's functions as the Authority may determine.

### SCHEDULE 9

Section 127.

#### SCHEME PROVIDING FOR DIVISION OF ASSETS OF IBA

##### *Preliminary*

- 1 In this Schedule—  
“relevant transferee” shall be construed in accordance with paragraph 2(1) below; and  
“transfer scheme” means a scheme under this Schedule made either by the IBA under paragraph 2(1) below or by the Secretary of State under paragraph 2(4) below.

##### *Making and modification of transfer scheme*

- 2 (1) The IBA shall make a scheme under this Schedule for the division of all their property, rights and liabilities between—  
(a) the Commission,  
(b) the Radio Authority, and  
(c) the nominated company;  
and references in this Schedule to the relevant transferees are references to the bodies specified in paragraphs (a) to (c) above.
- (2) Where such a scheme is made by the IBA, it shall not be capable of coming into force in accordance with section 127(1) of this Act unless it is approved by the Secretary of State.
- (3) Where such a scheme is submitted to the Secretary of State for his approval, he may modify the scheme before approving it.
- (4) If—  
(a) the IBA have not, before such time as the Secretary of State may notify to them as the latest time for the submission of such a scheme, submitted such a scheme for his approval, or  
(b) the Secretary of State decides not to approve (either with or without modifications) a scheme that has been submitted to him by the IBA,  
the Secretary of State may himself make a scheme for the division of the IBA's property, rights and liabilities between the relevant transferees.

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- (5) If, at any time after the Secretary of State has either—
- (a) approved (either with or without modifications) a scheme under this Schedule made by the IBA, or
  - (b) himself made such a scheme,
- but before the scheme has come into force in accordance with section 127(1) of this Act, the Secretary of State considers it appropriate to do so, he may determine that the scheme shall, on its so coming into force, come into force with such modifications as may be specified in his determination; and, in any such case, the scheme shall accordingly, on its coming into force, come into force with those modifications.
- (6) If at any time after a transfer scheme has come into force—
- (a) the Secretary of State considers it appropriate to make an order under this sub-paragraph, and
  - (b) every relevant transferee who would be affected by the order either—
    - (i) (in a case where any such transferee is the nominated company and that company has ceased to be wholly owned by the Crown) has consented to the making of the order, or
    - (ii) (in any other case) has been consulted by the Secretary of State,the Secretary of State may by order provide that the scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (7) Any power to modify a transfer scheme which is conferred on the Secretary of State by this paragraph may be so exercised as to make any such provision as could have been made by the scheme, and an order under sub-paragraph (6) above may provide for any of its provisions to have effect as from the coming into force of the scheme to which it relates.
- (8) In determining whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State shall have regard to the need to ensure that the division of property, rights and liabilities between the relevant transferees which is effected under this Schedule allocates property, rights and liabilities to those transferees in such a manner as appears to him to be appropriate—
- (a) in the case of the Commission and the Radio Authority, in the light of the functions conferred on those bodies by this Act; and
  - (b) in the case of the nominated company, with a view to the carrying on by that company of a business consisting of—
    - (i) the provision of broadcasting transmission services and services related to such services, and
    - (ii) the carrying out of research and development work relating to broadcasting.
- (9) It shall be the duty of the IBA and each of the relevant transferees to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on him by this paragraph.
- (10) Nothing in this paragraph shall require a scheme under this Schedule to make provision—
- (a) with respect to any equipment or other asset which the IBA have agreed to dispose of in pursuance of section 132(1) or 133(6) of this Act, or

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- (b) with respect to any liabilities of the IBA which—
    - (i) have not yet become enforceable against the IBA, and
    - (ii) are not specifically and exclusively referable to any particular part or parts of the undertaking of the IBA which is or are transferred in accordance with any such scheme to one or more of the relevant transferees, or
  - (c) with respect to any such rights or liabilities as are mentioned in sub-paragraph (11).
- (11) Those rights and liabilities are rights and liabilities acquired by the IBA in connection with the sharing by the IBA and the BBC of the use of facilities (of whatever description) in connection with the transmission of television programmes or local sound broadcasts.

#### *Content of transfer scheme*

- 3 (1) A transfer scheme may—
- (a) define the property, rights and liabilities to be allocated to a particular relevant transferee—
    - (i) by specifying or describing the property, rights and liabilities in question,
    - (ii) by referring to all the property, rights and liabilities comprised in a specified part of the IBA's undertaking, or
    - (iii) partly in the one way and partly in the other;
  - (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of two or more relevant transferees;
  - (c) impose on any relevant transferee an obligation to enter into such written agreements with, or execute such instruments in favour of, such other relevant transferee as may be specified in the scheme;
  - (d) create for any of the relevant transferees an interest in or right over property transferred in accordance with the scheme to any other of those transferees;
  - (e) in connection with any provision made by virtue of paragraph (d), make incidental provision as to the interests, rights and liabilities of other persons with respect to the property in question.
- (2) Without prejudice to the generality of sub-paragraph (1)(a), a transfer scheme may, in connection with any transfer to be made in accordance with the scheme, exclude from the transfer any rights and liabilities falling within paragraph 2(11) above and described in the scheme.
- (3) A transfer scheme may also allocate to any of the relevant transferees such property, rights and liabilities to which the IBA may become entitled or subject after the making of the scheme and before the transfer date as may be described in the scheme.
- (4) The property, rights and liabilities of the IBA that are capable of being transferred in accordance with a transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the IBA;
  - (b) property situated anywhere in the United Kingdom or elsewhere; and
  - (c) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.

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- (5) It is hereby declared for the avoidance of doubt that the rights and liabilities capable of being so transferred include rights and liabilities of the IBA under any agreement or arrangement for the payment of pensions, allowances or gratuities.
- (6) An obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c) shall be enforceable by civil proceedings brought by the other relevant transferee in question for an injunction or interdict or for any other appropriate relief.

#### *Effect of transfer scheme*

- 4 (1) Where a transfer scheme comes into force on the transfer date, this sub-paragraph shall have effect on that date so as to transfer to each of the relevant transferees, in accordance with the scheme's provisions and without further assurance, such of the property, rights and liabilities of the IBA as are allocated to that transferee by the scheme.
- (2) A transaction of any description which is effected in pursuance of any provision included in a transfer scheme in accordance with this Schedule shall be binding on all persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the IBA or any relevant transferee.
- (3) Where apart from this sub-paragraph any person would have power, in consequence of anything done or likely to be done by or under this Act, to terminate or modify an interest or right which is vested in the IBA at the passing of this Act, then—
  - (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that power shall not be exercisable in relation to the interest or right at any time before its transfer in accordance with the scheme; and
  - (b) without prejudice to any other provision of this Schedule, that power shall be exercisable in relation to the interest or right after its transfer only in so far as the scheme provides for it to be transferred subject to the power.
- (4) Where, in consequence of any transfer made in accordance with a transfer scheme, all the property, rights and liabilities comprised in a particular part of the IBA's undertaking are transferred to a relevant transferee—
  - (a) the <sup>M82</sup>Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to the transfer, whether or not they would otherwise so apply, and
  - (b) that undertaking shall accordingly (whether or not it would otherwise be so regarded) be regarded for the purposes of those Regulations as an undertaking in the nature of a commercial venture.

#### **Marginal Citations**

**M82** [S.I. 1981/1794](#).

#### *Third parties affected by transfer scheme*

- 5 (1) This paragraph applies where—
  - (a) in consequence of any transfer made in accordance with a transfer scheme, any right or liability of a person (other than the IBA or any

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- relevant transferee) which was enforceable against or by the IBA becomes enforceable against or by one or more relevant transferees; and
- (b) apart from this Schedule that person's consent or concurrence would have been required for that right or liability to become so enforceable;
- and in this paragraph references to a third party are references to any such person.
- (2) Subject to sub-paragraph (3), the IBA shall take reasonable steps to identify any third party and to notify him of the effect of the transfer in question on any right or liability of his falling within sub-paragraph (1), and of the effect of sub-paragraph (4).
- (3) A transfer scheme may provide that the duties imposed on the IBA by sub-paragraph (2) in relation to a transfer shall be imposed instead on such one of the relevant transferees as may be specified in the scheme.
- (4) Where—
- (a) any right or liability of a third party has become enforceable against or by more than one relevant transferee, and
- (b) the value of any property or interest of the third party is diminished thereby, such compensation as is just shall be paid to the third party by one or more of the relevant transferees.
- (5) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (4), or as to the person to or by whom it shall be paid, shall be referred to and determined by—
- (a) an arbitrator appointed by the Lord Chancellor; or
- (b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session.

#### *Supplemental provisions of scheme*

- 6 (1) A transfer scheme may contain supplemental, consequential and transitional provisions for the purposes of, or in connection with, the division effected or any other provision made by the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a transfer scheme may provide—
- (a) that for purposes connected with any transfer made in accordance with the scheme a relevant transferee to whom anything is transferred in accordance with the scheme is to be treated as the same person in law as the IBA;
- (b) that, so far as may be necessary for the purposes of or in connection with any such transfer, agreements made, transactions effected and other things done by or in relation to the IBA are to be treated as made, effected or done by or in relation to the relevant transferee to whom the transfer is made;
- (c) that, so far as may be necessary for the purposes of or in connection with any such transfer, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the IBA are to have effect with such modifications as are specified in the scheme;
- (d) that proceedings commenced by or against the IBA are to be continued by or against such one of the relevant transferees as the scheme may provide in relation to any circumstances specified or described in it;

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- (e) that the effect of any transfer made in accordance with the scheme in relation to contracts of employment with the IBA is not to be to terminate any such contracts but is to be that periods of employment with the IBA are to count for all purposes as periods of employment with the relevant transferee to whom the transfer is made;
- (f) that disputes as to the effect of the scheme between any of the relevant transferees are to be referred to such arbitration as may be specified in or determined under the scheme;
- (g) that determinations on such arbitrations, and certificates given jointly by all or any two of the relevant transferees as to the effect of the scheme as between the transferees concerned, are to be conclusive for all purposes.

*Vesting of IBA's property after coming into force of scheme*

- 7 (1) A transfer scheme may provide for the imposition of duties—
- (a) on the IBA, and
  - (b) on all or any of the relevant transferees,
- to take all such steps as may be requisite to secure that the vesting in any of those transferees, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a transfer scheme may require the IBA to comply with any directions of any of the relevant transferees in performing any duty imposed on the IBA by virtue of a provision included in the scheme by virtue of sub-paragraph (1).
- (3) A transfer scheme may provide that, until the vesting of any foreign property, right or liability of the IBA in a relevant transferee is effective under the relevant foreign law, it shall be the duty of the IBA to hold that property or right for the benefit of, or to discharge that liability on behalf of, that transferee.
- (4) Nothing in any provision included in a transfer scheme by virtue of this paragraph shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in a relevant transferee, by virtue of the scheme, of any foreign property, right or liability.
- (5) The IBA shall have all such powers as may be requisite for the performance of any duty imposed on them by any provision included in a transfer scheme by virtue of this paragraph; but such a scheme may require a relevant transferee to act on behalf of the IBA (so far as possible) for the purposes of, or in connection with, the performance of any such duty in relation to any property, right or liability vested in the transferee by virtue of the scheme.
- (6) A transfer scheme may provide that any foreign property, rights or liabilities that are acquired or incurred by the IBA after the scheme comes into force are immediately to become property, rights or liabilities of such one of the relevant transferees as is specified in the scheme; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the IBA when the scheme comes into force.
- (7) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private



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international law) by reference to the law of a country or territory outside the United Kingdom.

- (8) Any expenses incurred by the IBA in consequence of any provision included in a transfer scheme by virtue of this paragraph shall be met by the relevant transferees in such proportions as may be determined by or under the scheme.

*Certificate of Secretary of State as to vesting of property etc.*

- 8 (1) Subject to sub-paragraph (2), a certificate issued by the Secretary of State to the effect that any property, right or liability of the IBA vested at a particular time by virtue of this Schedule in one or more of the relevant transferees shall be conclusive evidence of the matters stated in the certificate.
- (2) Nothing in any such certificate shall prejudice the operation of a certificate issued by virtue of a provision included in a transfer scheme by virtue of paragraph 6(2) (g) above.

*Power of Secretary of State to control division of IBA's pension fund*

- 9 (1) If the Secretary of State so determines, the trustees of the Independent Broadcasting Authority Staff Pensions Plan shall refer to him, before such date as he may specify, the division and distribution of the relevant assets which is to be made by them for the purpose of making a transfer payment to a pension scheme established by the nominated company for its employees; and, if he does so, any such division and distribution of those assets and liabilities shall not be made by the trustees except—
- (a) with his consent, or
  - (b) in accordance with an order made by him under sub-paragraph (2).
- (2) Where any such division and distribution is referred to the Secretary of State under sub-paragraph (1), he may by order direct that the relevant assets shall be divided and distributed by the trustees in such manner, and at such time, as is specified in the order; and any provision of—
- (a) the Plan referred to in sub-paragraph (1), or
  - (b) any enactment relating to occupational pension schemes, including any enactment relating to transfer values,
- shall not have effect to the extent that it is inconsistent with the division and distribution of those assets in accordance with any such order.
- (3) When making an order under sub-paragraph (2) the Secretary of State shall have regard to the interests of all classes of persons who are for the time being beneficiaries or potential beneficiaries under the Plan referred to in sub-paragraph (1).
- (4) In this paragraph—
- “the relevant assets” means the assets held by or on behalf of the trustees;
  - and
  - “the trustees” means the trustees of the Plan referred to in sub-paragraph (1).
- (5) An order under sub-paragraph (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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*Discharge by IBA of contingent etc. liabilities*

- 10 (1) This paragraph applies to any liabilities to which the IBA are subject on or after the transfer date, being liabilities which—
- (a) had not become enforceable against the IBA before that date, and
  - (b) are not specifically and exclusively referable to any particular part or parts of the undertaking of the IBA which has or have been transferred in accordance with a transfer scheme to one or more of the relevant transferees.
- (2) Any sums required by the IBA for the purpose of discharging any liabilities to which this paragraph applies shall be paid to them by the Secretary of State out of money provided by Parliament.
- (3) Any payments made to the IBA under sub-paragraph (2) may be so made subject to such conditions as the Secretary of State may determine with the approval of the Treasury.

*Final accounts and annual report of IBA*

- 11 (1) The IBA shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in subsection (1) of section 42 of the Act 1981 (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last statement of accounts was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not; and that section shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that subsection in respect of that period.
- (2) The IBA shall, as soon as possible after the transfer date, prepare and transmit to the Secretary of State, in accordance with section 43 of that Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the references to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1) above.
- (4) The Secretary of State shall lay copies of any such report before each House of Parliament.
- (5) Any expenses incurred by the IBA under this paragraph shall be met by such one or more of the relevant transferees, and (if more than one) in such proportions, as may be determined by or under a transfer scheme.

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## SCHEDULE 10

Section 128.

### SUPPLEMENTARY PROVISIONS RELATING TO DISSOLUTION OF CABLE AUTHORITY

#### *Provisions as to vesting of property etc. of Cable Authority*

- 1 (1) Sub-paragraph (2) below shall have effect for the purposes of, or in connection with, the vesting in the Commission by virtue of section 128(1) of this Act of property, rights or liabilities of the Cable Authority.
- (2) Any agreement made, transaction effected or other thing done by or in relation to the Cable Authority which is in force or effective immediately before the transfer date shall have effect as from that date as if made, effected or done by or in relation to the Commission, in all respects as if the Commission were the same person, in law, as the Cable Authority; and accordingly references to the Cable Authority—
- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument,
  - (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority, and
  - (c) in any other document whatever (other than an enactment),
- shall be taken as from the transfer date as referring to the Commission.
- 2 (1) Where immediately before the transfer date there is in force an agreement which—
- (a) confers or imposes on the Cable Authority any rights or liabilities which vest in the Commission by virtue of section 128(1), and
  - (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of the Cable Authority,
- the agreement shall have effect, in relation to anything falling to be done on or after the transfer date, as if for that reference there were substituted a reference to such person as the Commission may appoint or, in default of appointment, to the member or employee of the Commission who corresponds as nearly as possible to the member or officer of the Authority in question.
- (2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

#### *Transfer of employees*

- 3 (1) It is hereby declared for the avoidance of doubt that—
- (a) the effect of section 128(1) in relation to any contract of employment with the Cable Authority in force immediately before the transfer date is merely to modify that contract (as from that date) by substituting the Commission as the employer (and not to terminate the contract or vary it in any other way); and
  - (b) that provision is effective to vest the rights and liabilities of the Cable Authority under any agreement or arrangement for the payment of pensions, allowances or gratuities in the Commission along with all the other rights and liabilities of the Authority.
- (2) Accordingly, for the purposes of any such agreement or arrangement as it has effect as from the transfer date, any period of employment with the Cable Authority shall count as employment with the Commission.

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- (3) The Transfer of Undertakings <sup>M83</sup>(Protection of Employment) Regulations 1981 shall apply to the transfer to the Commission, by virtue of section 128(1), of the undertaking of the Cable Authority, whether or not they would otherwise so apply; and that undertaking shall accordingly (whether or not it would otherwise be so regarded) be regarded for the purposes of those Regulations as an undertaking in the nature of a commercial venture.

**Marginal Citations**

**M83** S.I. 1981/1794.

*Final accounts and annual report of Cable Authority*

- 4 (1) The Cable Authority shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in subsection (1) of section 20 of the <sup>M84</sup>Cable and Broadcasting Act 1984 (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last statement of accounts was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not; and that section shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that subsection in respect of that period.
- (2) The Cable Authority shall, as soon as possible after the transfer date, prepare and transmit to the Secretary of State, in accordance with section 21 of that Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the references to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1) above.
- (4) The Secretary of State shall lay copies of any such report before each House of Parliament.
- (5) Any expenses incurred by the Cable Authority under this paragraph shall be met by the Commission.

**Marginal Citations**

**M84** 1984 c. 46.

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## SCHEDULE 11

Section 129.

### TRANSITIONAL PROVISIONS RELATING TO IBA’S BROADCASTING SERVICES

#### PART I

##### GENERAL

In this Schedule—

“the <sup>M85</sup>1981 Act” means the Broadcasting Act 1981;

“the Authority” means the Radio Authority;

“Channel 4” means the additional broadcasting service referred to in section 10(1) of the 1981 Act, but excluding so much of that service as consisted, immediately before the transfer date, in the broadcasting of programmes for reception wholly or mainly in Wales, and “on Channel 4” means in the said service;

“the interim period” means the period referred to in paragraph 1(1) in Part II of this Schedule;

“local licence” and “local service” have the same meaning as in Part III of this Act;

“S4C” means the television broadcasting service referred to in section 57(1) of this Act, and “on S4C” means in that service.

#### Marginal Citations

**M85** 1981 c. 68.

#### Marginal Citations

**M85** 1981 c. 68.

#### PART II

##### TELEVISION BROADCASTING SERVICES TO BE PROVIDED BY COMMISSION

*IBA’s television broadcasting services to be provided by Commission during interim period*

- 1 (1) During the period beginning with the transfer date and ending with 31st December 1992 (referred to in this Schedule as “the interim period”) the following television broadcasting services, namely—
- (a) ITV,
  - (b) Channel 4,
  - (c) any teletext service provided by the IBA down to the transfer date, and
  - (d) any DBS services so provided,
- shall be provided by the Commission in accordance with this Part of this Schedule.
- (2) The services provided by the Commission as mentioned in sub-paragraph (1) shall be of high quality both as to the transmission and as to the matter transmitted and (subject to paragraph 3(1) below) shall be provided by the Commission for so much of the United Kingdom as may from time to time be reasonably practicable.

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- (3) During the interim period the following provisions of the 1981 Act, namely—
- (a) section 2(2),
  - (b) sections 3 to 9,
  - (c) sections 14(3) and 15,
  - (d) sections 28 and 29, and
  - (e) Schedule 2,
- shall (subject to the provisions of this Part of this Schedule) have effect in connection with the provision of those services by the Commission as they had effect, immediately before the transfer date, in connection with the provision of those services by the IBA.
- (4) The provisions specified in sub-paragraph (3) above shall have effect in accordance with that sub-paragraph with the following general modifications, namely—
- (a) any reference to the IBA shall (subject to paragraph (b) and sub-paragraph (8) below) be construed as a reference to the Commission; and
  - (b) any reference to any of the broadcasting stations used by the IBA shall be construed as a reference to any of the broadcasting stations used in the provision of any of the services provided by the Commission as mentioned in sub-paragraph (1) above.
- (5) Section 3(2)(b) of the 1981 Act shall have effect in accordance with sub-paragraph (3) above with the substitution of the following sub-paragraph for sub-paragraph (ii)—
- “(ii) by reason of the termination of any contract with a programme contractor;”and.
- (6) Section 8 of the 1981 Act shall have effect in accordance with sub-paragraph (3) above with the omission of subsections (6) to (9) of that section; but (except in the case of any programme to which the Commission determine that the following prohibition is not to apply) none of the broadcasting services provided by the Commission as mentioned in sub-paragraph (1) above shall include a programme which is sponsored by any person whose business consists, wholly or mainly—
- (a) in the manufacture or supply of a product, or
  - (b) in the provision of a service,
- the advertising of which in any such broadcasting service is prohibited by virtue of any provision of that Act (as applied by this paragraph) or of the code under section 9 of that Act (as so applied).
- (7) Section 9 of the 1981 Act shall have effect in accordance with sub-paragraph (3) above as if—
- (a) in subsection (1)(a), after “standards and practice in advertising” there were inserted “ and in the sponsoring of programmes ”;
  - (b) in subsection (1)(b), there were inserted at the end “ and as regards the sponsoring of programmes so broadcast ”; and
  - (c) after “methods of advertising” (wherever occurring) there were inserted “ or sponsorship ”;
- and the Commission may give effect to paragraph (a) above by making modifications to the code in force under section 9 immediately before the transfer date.
- (8) Section 29(5) of the 1981 Act shall have effect in accordance with sub-paragraph (3) above as if the reference to requiring the IBA by notice in writing to do, or not to do,

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anything mentioned in that provision were a reference to requiring the Commission by notice in writing to direct any programme contractor specified in the notice—

- (a) to do, or not to do, that thing, or
- (b) (if the context so requires) to secure that that thing is or is not done.

- (9) Without prejudice to the generality of sub-paragraph (5) of paragraph 2 below, the Commission may make such variations of a contract to which sub-paragraph (1) of that paragraph applies as appear to them to be appropriate for facilitating or ensuring compliance with any direction or notice given to or served on them under section 28 or 29 of the 1981 Act (as applied by this paragraph).

*General provisions about programme contracts and programme contractors*

- 2 (1) Sections 2(3) and 14(2) of the 1981 Act shall have effect in relation to the Commission and the programmes and teletext transmissions broadcast by them in the services provided by them as mentioned in paragraph 1(1) above as they had effect immediately before the transfer date in relation to the IBA and the programmes and teletext transmissions broadcast by them in the services mentioned in paragraph 1(1); and where a contract between the IBA and a programme contractor or a teletext contractor is effective immediately before that date—

- (a) the contract shall continue to have effect on and after that date (subject to and in accordance with this Part of this Schedule) as a contract between the Commission and that contractor and any other party to it, and
- (b) any reference in the contract to the IBA shall accordingly be construed, in relation to any time falling on or after that date, as a reference to the Commission.

- (2) During the interim period the following provisions of the 1981 Act, namely—

- (a) sections 19(1) to (2B) and 20(2) to (9),
- (b) sections 21 to 25,
- (c) sections 32 to 35, and
- (d) Schedule 4,

shall have effect in relation to any contract to which sub-paragraph (1) applies, or (as the case may be) in relation to the programme contractor or teletext contractor under any such contract, subject to the modifications specified in sub-paragraph (3) and subject also to paragraphs 4 and 5 below.

- (3) The modifications of the provisions specified in sub-paragraph (2) are as follows—

- (a) any reference in those provisions to the IBA shall (subject to paragraphs (b) and (c) below) be construed as a reference to the Commission;
- (b) sections 21 and 23 shall have effect as if any reference to the IBA's obligation to transmit the programmes supplied by a programme contractor were a reference to the right and the duty of the programme contractor under his contract to provide programmes for broadcasting in one of the services provided by the Commission as mentioned in paragraph 1(1) above;
- (c) section 22 shall have effect as if any reference to the programmes, or television programmes, supplied to the IBA were a reference to the programmes, or television programmes, supplied for broadcasting in one of those services; and
- (d) section 32(1)(a) shall have effect as if—
  - (i) for “the branch” there were substituted “the part”, and

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(ii) for “section 36(2) in relation to that branch” there were substituted “ paragraph 12(1) of Schedule 1 to the Broadcasting Act 1990 in relation to that part ”.

- (4) The Commission shall do all that they can to secure that during the interim period no person who is, or is an associate of, a TV programme contractor—
- (a) holds any local licence, or
  - (b) controls any body which holds any such licence, or
  - (c) is a participant with more than a 20 per cent. interest in a body corporate which holds any such licence,
- in a case where the area or locality for which the licensed service is to be provided is to a significant extent the same as the area for which television programmes are to be provided under the TV programme contractor’s contract; and this sub-paragraph shall be construed in accordance with Part I of Schedule 2 to this Act.
- (5) The Commission may make such variations of a contract to which sub-paragraph (1) applies as appear to them to be appropriate in consequence of any of the provisions of this Part of this Schedule.

*Provisions relating to Channel 4*

- 3 (1) Channel 4 shall be provided by the Commission during the interim period for so much of England, Scotland and Northern Ireland as may from time to time be reasonably practicable.
- (2) The programmes (other than advertisements) broadcast by the Commission on Channel 4 shall (without prejudice to section 12(2) of the 1981 Act, as applied by this paragraph) be provided by the Commission.
- (3) In consequence of sub-paragraph (2), sections 3(2) and 6 of the 1981 Act (as applied by paragraph 1 above) do not apply in the case of Channel 4.
- (4) Subject to the modifications specified in sub-paragraph (5), sections 11 to 13 of the 1981 Act shall have effect in connection with the provision of Channel 4 by the Commission during the interim period as they had effect immediately before the transfer date in connection with the provision of that service by the IBA.
- (5) The modifications of the provisions specified in sub-paragraph (4) are as follows—
- (a) any reference in those provisions to the IBA shall (subject to paragraph (c) below) be construed as a reference to the Commission;
  - (b) section 12(1) shall have effect as if for the reference to paragraph 4(1) of Schedule 1 to the 1981 Act there were substituted a reference to paragraph 1(3) of Schedule 1 to this Act;
  - (c) section 12(2) shall have effect as if for the reference to a subsidiary of the IBA formed by them for the purpose there were substituted a reference to a subsidiary of the Commission (being the body corporate formed by the IBA in pursuance of that provision); and
  - (d) in section 13, subsection (4) shall (in consequence of paragraph 1(6) above) have effect with the omission of paragraph (c).

*Provisions relating to teletext services*

- 4 (1) For the purposes of—



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- (a) this Part of this Schedule, and
- (b) the provisions of the 1981 Act which have effect in accordance with this Part of this Schedule,

teletext transmissions shall not be treated as programmes; but this is subject to sub-paragraph (2) and to any of those provisions of the 1981 Act which expressly requires such transmissions to be so treated for the purposes of any particular provision.

- (2) In paragraphs 1(8) and 2(3)(b) above and 10 below and in the provisions specified in Part I of Schedule 3 to the 1981 Act (as they have effect in accordance with this Part of this Schedule)—

- (a) references to programmes or to television programmes shall be read as including references to teletext transmissions; and
- (b) references to programme contractors shall be read as including references to teletext contractors.

- (3) In section 3(2) of the 1981 Act, in its application to teletext transmissions or teletext contractors by virtue of sub-paragraph (2), the reference to section 2(3) of that Act shall be read as a reference to section 14(2) of that Act (as it has effect by virtue of paragraph 2(1) above).

- (4) The following provisions of the 1981 Act, namely—

- (a) section 20(2)(b) and (3), and
- (b) section 22,

shall not have effect by virtue of paragraph 2(2) above in relation to teletext contractors or their contracts.

#### *Provisions relating to DBS services*

- 5 (1) The following provisions of the 1981 Act, namely—
  - (a) in section 2(2), paragraph (c) and in paragraph (b) the words “and a proper balance and wide range in their subject matter”,
  - (b) in section 4(1), paragraph (d) and so much of paragraph (b) as relates to the giving of a sufficient amount of time in the programmes to news and news features,
  - (c) section 20(2)(b) and (3),
  - (d) section 22, and
  - (e) section 24,

shall not have effect by virtue of paragraph 1(3) or 2(2) above in connection with the provision of DBS services by the Commission or (as the case may be) in relation to DBS contractors or their contracts.

- (2) Every contract between the Commission and a DBS programme contractor shall contain all such provisions as the Commission think necessary or expedient to ensure that the financial and other arrangements for the provision of the satellite transponder are made by the contractor.

- (3) For the purpose of enabling a DBS programme or teletext contractor to make charges for the reception of programmes provided by him or transmissions containing material so provided, the Commission may, notwithstanding anything in the 1981 Act as it has effect in accordance with this Part of this Schedule, broadcast the programmes or transmissions in such a form (whether scrambled, encoded or

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otherwise) as will prevent persons from receiving them unless they obtain from the contractor the means of doing so.

- (4) Where under the power conferred by sub-paragraph (3) the Commission broadcast programmes or transmissions in such a form as is mentioned in that sub-paragraph, nothing in the 1981 Act (as it so has effect) shall be taken as requiring the Commission to permit advertisements to be included in the programmes or transmissions.
- (5) Where any service falling within section 46(1) of this Act is provided during the interim period on any of the spare capacity within the frequencies on which any DBS services are provided by the Commission in accordance with this Part of this Schedule, that service is licensable under section 47 of this Act as a licensable programme service, and not otherwise.

#### *General provisions relating to S4C*

- 6 (1) Subject to the provisions of this paragraph and paragraph 7 below, S4C shall be provided during the interim period by the Welsh Authority in accordance with Chapter VI of Part I of this Act.
- (2) During that period—
  - (a) any reference in section 57(3) or 58(2) or (4) of this Act to Channel 4 shall be construed as a reference to the Channel 4 service provided by the Commission in accordance with paragraph 1 above; and
  - (b) the reference in section 58(2) to the Channel Four Television Corporation shall be construed as a reference to the Commission.
- (3) So much of section 4(1)(d) of the 1981 Act (as applied by paragraph 1 above) as relates to cases where another language as well as English is in common use among persons served by the station or stations in question, shall, in the case of programmes broadcast by the Commission on ITV for reception wholly or mainly in Wales, apply only to languages other than Welsh.

#### *Broadcasting of advertisements on S4C*

- 7 (1) During the interim period the programmes broadcast by the Welsh Authority on S4C for reception in the area of any TV programme contractor may, so long as the provisions of the 1981 Act (as applied by this Part of this Schedule) are complied with in relation thereto, include advertisements provided for insertion therein by that contractor in consideration of payments to him.
- (2) Any such TV programme contractor shall have the right to provide advertisements for inclusion in the programmes broadcast on S4C for reception in his area so long as—
  - (a) he makes the required payments to the Commission, and
  - (b) the provisions of the 1981 Act (as applied by this Part of this Schedule) are complied with in relation to such advertisements.
- (3) In sub-paragraph (2) “the required payments” means such payments as are required to be paid by the programme contractor by virtue of any provision of his contract included in pursuance of section 13(2) of the 1981 Act.

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- (4) For any period in which programmes are to be broadcast on S4C for reception in the area of a TV programme contractor it shall be the duty of the Welsh Authority to make suitable arrangements—
  - (a) for the contractor to receive advance information about the programmes other than advertisements which are to be so broadcast in that period and about the periods which will be available for the broadcasting of advertisements; and
  - (b) for the inclusion, in the programmes so broadcast in that period, of advertisements provided for the purpose by the contractor in the exercise of his right to do so under sub-paragraph (2).
- (5) No period allocated by the Welsh Authority to the broadcasting of advertisements on S4C shall be located—
  - (a) in any break in any programme supplied to them by the BBC; or
  - (b) without the consent of the BBC, at the beginning or end of any such programme.
- (6) Orders for the inclusion by a TV programme contractor of advertisements among those provided by him for insertion in the programmes broadcast on S4C may be received either through advertising or other agents or direct from the advertiser.
- (7) During the interim period—
  - (a) section 8(5) of the 1981 Act shall apply in relation to the programmes broadcast by the Welsh Authority on S4C as that provision applies, in accordance with this Part of this Schedule, in relation to the programmes broadcast by the Commission on ITV;
  - (b) the Commission shall do all that they can to secure that the provisions of—
    - (i) Schedule 2 to the 1981 Act (as it applies in accordance with this Part of this Schedule), and
    - (ii) the code under section 9 of that Act,are complied with in relation to the advertisements broadcast by the Welsh Authority on S4C and in relation to the sponsorship of programmes so broadcast;
  - (c) section 9(2) and (3) of that Act shall apply accordingly in relation to advertisements and other programmes so broadcast; and
  - (d) (except in the case of any programme to which the Welsh Authority determine that this paragraph is not to apply) S4C shall not contain any programme which is sponsored by any person whose business consists, wholly or mainly—
    - (i) in the manufacture or supply of a product, or
    - (ii) in the provision of a service,the advertising of which on ITV is prohibited by virtue of any provision of that Act or of the code under section 9 of that Act.
- (8) So long as any directions given under section 9(4) of the 1981 Act (whether by the IBA or by the Commission) remain in force, the Welsh Authority shall, in broadcasting advertisements on S4C, give effect to the provisions of the directions as if they were provisions regulating the times when advertisements are to be allowed to be broadcast on S4C.

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- (9) Section 60(1) to (4) and (6) of this Act shall not have effect in relation to the Welsh Authority during the interim period.

*Financing of S4C during interim period*

- 8 (1) For each financial year, or part of a financial year, falling within the interim period the Commission shall (unless any payment has already been made in respect of it under section 39(1) of the 1981 Act) pay to the Welsh Authority—
- (a) such sum or sums as may be agreed between them to be appropriate for enabling the Welsh Authority to meet their reasonable outgoings, or
  - (b) in default of such agreement, such sum or sums as the Secretary of State may determine to be appropriate for that purpose.
- (2) For the purposes of section 32(1)(a) of the 1981 Act (as applied by paragraph 2 above) all sums paid by the Commission to the Welsh Authority in pursuance of sub-paragraph (1) above shall be treated as expenditure properly incurred in respect of the part of the Commission's undertaking which consists of the provision of television broadcasting services.
- (3) In deciding from time to time whether to make any, and if so what, use of his power under subsection (8) of section 32 of the 1981 Act (as so applied) to amend by order subsections (4) and (5) of that section the Secretary of State may have regard to any increase in the aggregate amount of the payments to be made under the head described in subsection (1)(a) of that section which is attributable to the provisions of sub-paragraph (1).
- (4) The provisions applied to the Welsh Authority by section 52(2) of the 1981 Act shall continue to apply to them on and after the transfer date in relation to any financial year ending before that date; and paragraphs 12 and 13 of Schedule 6 to this Act shall accordingly apply in relation to any subsequent financial year.

*Delivery of programmes by means of local delivery services*

- 9 Part II of this Act shall have effect as if section 72(2) of this Act included a reference to any television broadcasting service provided by the Commission in accordance with this Part of this Schedule.

*Provisions relating to Broadcasting Complaints Commission*

- 10 (1) Part V of this Act shall have effect as if—
- (a) section 143(2) of this Act included a reference to any television programme broadcast by the Commission during the interim period;
  - (b) (subject to sub-paragraph (2)) the Commission were—
    - (i) in relation to the provision by them of television broadcasting services in accordance with this Part of this Schedule, and
    - (ii) in relation to the broadcasting of advertisements on S4C during the interim period,
 a broadcasting body within the meaning of that Part of this Act; and
  - (c) the Welsh Authority accordingly were not a broadcasting body within the meaning of that Part of this Act in relation to any such broadcasting of advertisements on S4C.

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- (2) Sub-paragraph (1)(b) shall not have effect for the purposes of section 145(5) of this Act; and the Commission shall make such variations of any contract to which paragraph 2(1) above applies as appear to them to be appropriate—
- (a) for requiring the programme contractor under that contract—
    - (i) in the case of every programme provided by him which is broadcast by the Commission during the interim period, to retain a recording of that programme for the period of 90 days beginning with the broadcast,
    - (ii) if requested to do so by the Commission for the purpose of enabling them to comply with any requirement imposed on them in pursuance of section 145(4), 155(3) or 167(1) of this Act, to produce any such recording to them, and
    - (iii) if requested to do so by the Commission for the purpose of enabling them to comply with any requirement imposed on them in pursuance of section 145(4) or 155(3) of this Act, to produce to them any transcript of any such programme which he is able to produce to them; and
  - (b) for ensuring compliance by the programme contractor with any request to which section 145(7) of this Act applies which may be made to him by the BCC.
- (3) For the financial year which includes the commencement of section 149 of this Act, and each subsequent financial year falling wholly or partly within the interim period, the Secretary of State shall notify to the Commission the sum which he considers to be the appropriate contribution by that body, in respect of the programme contractors under contracts to which paragraph 2(1) above applies, towards the expenses of the BCC; and the Commission shall pay to the Secretary of State any sum notified to them under this sub-paragraph.
- (4) Paragraph 2(1)(g)(i) of Schedule 13 to this Act shall have effect during the interim period as if the reference to the BBC or the Welsh Authority included a reference to the Commission.
- (5) In this paragraph “the BCC” means the Broadcasting Complaints Commission.

*Provisions relating to Broadcasting Standards Council*

- 11 Part VI of this Act shall have effect during the interim period as if—
- (a) section 152(2) of this Act included a reference to any television programme broadcast by the Commission during that period;
  - (b) the Commission were—
    - (i) in relation to the provision by them of television broadcasting services in accordance with this Part of this Schedule, and
    - (ii) in relation to the broadcasting of advertisements on S4C during the interim period,a broadcasting body within the meaning of that Part of this Act; and
  - (c) the Welsh Authority accordingly were not a broadcasting body within the meaning of that Part of this Act in relation to any such broadcasting of advertisements on S4C.

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### *Supplementary provisions*

- 12 (1) Any code, notice, direction, approval or other thing drawn up, given or done by or in relation to the IBA—
- (a) in pursuance of a provision of the 1981 Act which has effect during the interim period in accordance with this Part of this Schedule, and
  - (b) in connection with any of the IBA’s television broadcasting services,
- shall, if in force or effective immediately before the transfer date, have effect as from that date for the relevant purposes as if drawn up, given or done by or in relation to the Commission.
- (2) Anything which immediately before that date was in the process of being done by or in relation to the IBA may, if it was being so done as mentioned in paragraphs (a) and (b) of sub-paragraph (1), be continued on or after that date by or in relation to the Commission.
- (3) Sections 61 and 62 of the 1981 Act shall have effect during the interim period for the relevant purposes as if any reference to the IBA were a reference to the Commission.
- (4) In this paragraph “the relevant purposes” means the purposes of the 1981 Act as it has effect during the interim period in accordance with this Part of this Schedule.

## PART III

### REPLACEMENT OF DBS CONTRACTS BY LICENCES UNDER PART I

#### *Replacement of DBS programme contract by domestic satellite licence*

- 1 (1) Where any contract which, by virtue of paragraph 2(1) in Part II of this Schedule, has effect as a contract between the Commission and a DBS programme contractor is effective immediately before the relevant date—
- (a) the contract shall cease to have effect on that date; but
  - (b) the contractor shall be granted by the Commission as from that date a licence under Part I of this Act to provide a domestic satellite service which, in accordance with section 44(2) of this Act, authorises the provision of a multichannel service on the frequencies on which any DBS services consisting of programmes provided by him under the contract were being provided by the Commission down to that date.
- (2) In sub-paragraph (1) “multichannel service” means a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies.
- (3) Any licence granted in pursuance of sub-paragraph (1) shall be so granted notwithstanding anything in sections 15 to 17 of this Act (as applied by section 44 of this Act); and nothing in section 19 of this Act (as so applied) shall apply to any such licence until such time (if any) as it is renewed in accordance with sub-paragraph (4).
- (4) Section 20 of this Act (as so applied) shall apply to any such licence as if—
- (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period beginning with the relevant date and ending with the date on which the contract referred to in sub-paragraph (1) would have expired apart from that sub-paragraph;

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- (b) in subsection (6)(b), the words from “a different” to “as” were omitted; and
  - (c) in subsection (9)(a), the reference to any conditions included in the licence in pursuance of section 19 were a reference to any conditions so included in accordance with sub-paragraph (5) below.
- (5) Where any such licence is to be renewed in accordance with sub-paragraph (4), the Commission shall (notwithstanding section 3(4) of this Act) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (3).
- (6) Section 3(3) shall, in its application in relation to any such licence, have effect—
- (a) with the omission of paragraph (a), and
  - (b) as if the reference to Part I of this Act included a reference to this Part of this Schedule.
- (7) Section 41 shall have effect in relation to any such licence with the omission of subsection (2); and the maximum amount which the holder of any such licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section shall instead be the sum for the time being specified in section 45(6).
- (8) Except as provided in the preceding provisions of this paragraph, Part I of this Act applies to a licence granted in pursuance of this paragraph as it applies to any other licence to provide a domestic satellite service.
- (9) In this Part of this Schedule—
- (a) “the relevant date” means the day immediately following the end of the interim period; and
  - (b) “additional services licence” and “domestic satellite licence” have the same meaning as in Part I of this Act.

*Power to require licence holder to make additional payments under 1981 Act*

- 2 (1) The Secretary of State may by order provide for such of the provisions of sections 32 to 35 of, and Schedule 4 to, the 1981 Act as are specified in the order to have effect (subject to such modifications as are so specified)—
- (a) in relation to the holder of any licence granted in pursuance of paragraph 1 above, or
  - (b) in relation to any such licence,
- with a view to making provision for and in connection with the making by the holder of any such licence to the Commission of payments determined in accordance with section 32 of that Act in respect of profits or advertising revenue (or both) within the meaning of that section.
- (2) Any such order shall be so framed as to secure that, subject to such modifications as the Secretary of State considers appropriate and to sub-paragraph (4), the provisions of the 1981 Act applied by the order as mentioned in sub-paragraph (1)(a) and (b) so apply in a similar way to that in which they applied immediately before the relevant date in relation to a DBS programme contractor or (as the case may be) in relation to the contract of any such contractor.
- (3) Without prejudice to the generality of sub-paragraph (2), any such order shall provide for any excess of a DBS programme contractor’s relevant expenditure over his

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relevant income to be carried forward and treated as relevant expenditure for the purpose of computing his profits as the holder of a licence granted in pursuance of paragraph 1 above.

Expressions used in this sub-paragraph which are also used in Schedule 4 to the 1981 Act have the same meaning as in that Schedule.

- (4) The power of the Secretary of State to make an order under subsection (8) of section 32 of the 1981 Act shall include power to make an order amending any of the provisions of subsections (4) and (5) of that section in so far as they have effect, by virtue of sub-paragraph (1), in relation to the holder of a licence granted in pursuance of paragraph 1 above.
- (5) Where an order under sub-paragraph (1) comes into force at any time after the relevant date, the Commission shall (notwithstanding section 3(4) of this Act) by notice served on the licence holder vary any licence granted in pursuance of paragraph 1 above by including in it such conditions as appear to them to be necessary or expedient in consequence of the order.
- (6) Nothing in any such order shall impose on the holder of any such licence any liability to make any payment in respect of any time when any conditions included in the licence in accordance with paragraph 1(5) above are in force.
- (7) An order shall not be made by the Secretary of State under sub-paragraph (1) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

*Replacement of DBS teletext contract by additional services licence*

- 3 (1) Where any contract which, by virtue of paragraph 2(1) in Part II of this Schedule, has effect as a contract between the Commission and a DBS teletext contractor is effective immediately before the relevant date—
  - (a) the contract shall cease to have effect on that date; but
  - (b) the contractor shall be granted by the Commission as from that date an additional services licence under Part I of this Act which allocates for use under the licence all of the spare capacity within the frequencies on which any DBS services consisting of programmes provided by him as a DBS programme contractor were provided by the Commission down to that date.
- (2) Any such licence shall be so granted notwithstanding anything in sections 50 and 51 of this Act; and nothing in section 52 of this Act shall apply to any such licence until such time (if any) as it is renewed in accordance with sub-paragraph (3).
- (3) Section 53 of this Act shall apply to any such licence as if—
  - (a) in subsection (1)(a), the reference to a period of ten years were a reference to the period beginning with the relevant date and ending with the date on which any contract to which paragraph 1(1) above applies and to which the DBS teletext contractor was a party immediately before the relevant date would have expired apart from that provision;
  - (b) subsection (3) were omitted;
  - (c) in subsection (5), paragraph (a) were omitted;
  - (d) in subsection (7)(b), the words from “a different” to “as” were omitted; and



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- (e) in subsection (10), the reference to any conditions included in the licence in pursuance of section 52 were a reference to any conditions so included in accordance with sub-paragraph (4) below.
- (4) Where any such licence is to be renewed in accordance with sub-paragraph (3), the Commission shall (notwithstanding section 3(4) of this Act) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (2).
- (5) Section 3(3) shall, in its application in relation to any such licence, have effect—
  - (a) with the omission of paragraph (a), and
  - (b) as if the reference to Part I of this Act included a reference to this Part of this Schedule.
- (6) Section 55 shall have effect in relation to any such licence with the omission of subsection (2); and the maximum amount which the holder of any such licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1) of that section shall instead be the sum for the time being specified in section 45(6).
- (7) In sub-paragraph (1)(b) above the reference to spare capacity within the frequencies referred to in that provision includes a reference to spare capacity within those frequencies which (not being spare capacity within the signals carrying a television broadcasting service) is not spare capacity within the meaning of Part I of this Act; and references in that Part of this Act (however expressed) to the spare capacity authorised to be used under an additional services licence shall, in relation to any such licence as is mentioned in sub-paragraph (1)(b), accordingly be construed as including a reference to spare capacity within those frequencies which is not spare capacity within the meaning of that Part of this Act.
- (8) Except as provided in the preceding provisions of this paragraph, Part I of this Act applies to a licence granted in pursuance of this paragraph as it applies to any other additional services licence.

#### PART IV

##### SOUND BROADCASTING SERVICES TO BE PROVIDED BY RADIO AUTHORITY

###### *Certain local sound broadcasting services of IBA to be provided by Radio Authority as from transfer date*

- 1 (1) So long as any contracts for the provision of local sound broadcasts continue in force on and after the transfer date by virtue of paragraph 2(1) below, the Authority shall provide, in accordance with this Part of this Schedule, local sound broadcasting services consisting in the broadcasting of programmes provided by the programme contractors under those contracts.
- (2) The services provided by the Authority as mentioned in sub-paragraph (1) shall be of high quality both as to the transmission and as to the matter transmitted, and shall be provided for the localities in the United Kingdom for which the programmes in question are to be provided by the programme contractors under their contracts.
- (3) As from the transfer date the following provisions of the 1981 Act, namely—

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- (a) section 2(2),
- (b) sections 3 to 9,
- (c) sections 28 and 29, and
- (d) Schedule 2,

shall have effect in connection with the provision of those services by the Authority as they had effect, immediately before the transfer date, in connection with the provision of local sound broadcasting services by the IBA.

- (4) The provisions specified in sub-paragraph (3) above shall have effect in accordance with that sub-paragraph with the following general modifications, namely—

- (a) any reference to the IBA shall (subject to paragraph (b) and sub-paragraph (8) below) be construed as a reference to the Authority; and
- (b) any reference to any of the broadcasting stations used by the IBA shall be construed as a reference to any of the broadcasting stations used in the provision of any of the services provided by the Authority as mentioned in sub-paragraph (1) above.

- (5) Section 3(2)(b) of the 1981 Act shall have effect in accordance with sub-paragraph (3) above with the substitution of the following sub-paragraph for sub-paragraph (ii)—

“(ii) by reason of the termination of any contract with a programme contractor; and”.

- (6) Section 8 of the 1981 Act shall have effect in accordance with sub-paragraph (3) above with the omission of subsections (6) to (9) of that section; but (except in the case of any programme to which the Authority determine that the following prohibition is not to apply) none of the broadcasting services provided by the Authority as mentioned in sub-paragraph (1) above shall include a programme which is sponsored by any person whose business consists, wholly or mainly—

- (a) in the manufacture or supply of a product, or
- (b) in the provision of a service,

the advertising of which in any such broadcasting service is prohibited by virtue of any provision of that Act (as applied by this paragraph) or of the code under section 9 of that Act (as so applied).

- (7) Section 9 of the 1981 Act shall have effect in accordance with sub-paragraph (3) above as if—

- (a) in subsection (1)(a), after “standards and practice in advertising” there were inserted “ and in the sponsoring of programmes ”;
- (b) in subsection (1)(b), there were inserted at the end “ and as regards the sponsoring of programmes so broadcast ”; and
- (c) after “methods of advertising” (wherever occurring) there were inserted “ or sponsorship ”;

and the Authority may give effect to paragraph (a) above by making modifications to the code in force under section 9 immediately before the transfer date.

- (8) Section 29(5) of the 1981 Act shall have effect in accordance with sub-paragraph (3) above as if the reference to requiring the IBA by notice in writing to do, or not to do, anything mentioned in that provision were a reference to requiring the Authority by notice in writing to direct any programme contractor specified in the notice—

- (a) to do, or not to do, that thing, or

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(b) (if the context so requires) to secure that that thing is or is not done.

- (9) Without prejudice to the generality of sub-paragraph (6) of paragraph 2 below, the Authority may make such variations of a contract to which sub-paragraph (1) of that paragraph applies as appear to them to be appropriate for facilitating or ensuring compliance with any direction or notice given to or served on them under section 28 or 29 of the 1981 Act (as applied by this paragraph).

*Preservation of certain local sound broadcasting contracts*

- 2 (1) Where—
- (a) the IBA has, at any time before the transfer date, entered into a contract with a programme contractor for the provision by the contractor of local sound broadcasts in any locality, and
  - (b) the contract is effective immediately before that date,
- then, unless the contract is one to which paragraph 2 in Part V of this Schedule applies (and subject to paragraph 1 in that Part)—
- (i) the contract shall continue to have effect on and after that date (subject to and in accordance with this Part of this Schedule) as a contract between the Authority and that contractor and any other party to it, and
    - (ii) any reference in the contract to the IBA shall accordingly be construed, in relation to any time falling on or after that date, as a reference to the Authority.
- (2) Section 2(3) of the 1981 Act shall have effect in relation to the programmes broadcast by the Authority in accordance with paragraph 1(1) above as if—
- (a) any reference in that subsection to the IBA were a reference to the Authority; and
  - (b) the reference in that subsection to any such contracts as are there mentioned were a reference to contracts which continue in force by virtue of sub-paragraph (1) above.
- (3) As from the transfer date the following provisions of the 1981 Act, namely—
- (a) sections 19(1) to (2B) and 20(2) to (9),
  - (b) sections 21 to 25,
  - (c) sections 32 to 35, and
  - (d) Schedule 4,
- shall have effect in relation to any contract which continues in force by virtue of sub-paragraph (1), or (as the case may be) in relation to the programme contractor under any such contract, subject to the modifications specified in sub-paragraph (4).
- (4) The modifications of the provisions specified in sub-paragraph (3) are as follows—
- (a) any reference in those provisions to the IBA shall (subject to paragraphs (b) and (c) below) be construed as a reference to the Authority;
  - (b) sections 21 and 23 shall have effect as if any reference to the IBA's obligation to transmit the programmes supplied by a programme contractor were a reference to the right and the duty of the programme contractor under his contract to provide programmes for broadcasting in one of the services provided by the Authority as mentioned in paragraph 1(1) above;

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- (c) section 22 shall have effect as if any reference to the programmes supplied to the IBA were a reference to the programmes supplied for broadcasting in one of those services; and
  - (d) section 32(2)(a) shall have effect as if—
    - (i) for “the branch” there were substituted “ the part ”, and
    - (ii) for “section 36(2) in relation to that branch” there were substituted “ paragraph 12(1) of Schedule 8 to the Broadcasting Act 1990 in relation to that part ”.
- (5) The Authority shall do all that they can to secure that, so long as any contract continues in force by virtue of sub-paragraph (1), neither the programme contractor under the contract nor any associate of his—
- (a) holds any local licence, or
  - (b) controls any body which holds any such licence, or
  - (c) is a participant with more than a 20 per cent. interest in a body corporate which holds any such licence,
- in a case where the area or locality for which the licensed service is to be provided is to a significant extent the same as the locality for which local sound broadcasts are to be provided under the programme contractor’s contract; and this sub-paragraph shall be construed in accordance with Part I of Schedule 2 to this Act.
- (6) The Authority may make such variations of a contract which continues in force by virtue of sub-paragraph (1) as appear to them to be appropriate in consequence of any of the provisions of this Part of this Schedule.

*Delivery of programmes by means of local delivery services*

- 3 Part II of this Act shall have effect as if section 72(2) of this Act included a reference to any local sound broadcasting service provided by the Authority in accordance with this Part of this Schedule.

*Provisions relating to Broadcasting Complaints Commission*

- 4 (1) Part V of this Act shall have effect as if—
- (a) section 143(2) of this Act included a reference to any sound programme broadcast by the Authority in accordance with this Part of this Schedule; and
  - (b) (subject to sub-paragraph (2)) the Authority were, in relation to the provision by them of local sound broadcasting services in accordance with this Part of this Schedule, a broadcasting body within the meaning of that Part of this Act.
- (2) Sub-paragraph (1)(b) shall not have effect for the purposes of section 145(5) of this Act; and the Authority shall make such variations of any contract which continues in force by virtue of paragraph 2(1) above as appear to them to be appropriate—
- (a) for requiring the programme contractor under that contract—
    - (i) in the case of every programme provided by him which is broadcast by the Authority in accordance with this Part of this Schedule, to retain a recording of that programme for the period of 42 days beginning with the broadcast,
    - (ii) if requested to do so by the Authority for the purpose of enabling them to comply with any requirement imposed on them in pursuance

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- of section 145(4), 155(3) or 167(1) of this Act, to produce any such recording to them, and
- (iii) if requested to do so by the Authority for the purpose of enabling them to comply with any requirement imposed on them in pursuance of section 145(4) or 155(3) of this Act, to produce to them any transcript of any such programme which he is able to produce to them; and
- (b) for ensuring compliance by the programme contractor with any request to which section 145(7) of this Act applies which may be made to him by the BCC.
- (3) For the financial year which includes the commencement of section 149 of this Act, and each subsequent financial year falling wholly or partly within the period during which the Authority provide local sound broadcasting services in accordance with this Part of this Schedule, the Secretary of State shall notify to the Authority the sum which he considers to be the appropriate contribution by that body, in respect of the programme contractors under contracts which continue in force by virtue of paragraph 2(1) above, towards the expenses of the BCC; and the Authority shall pay to the Secretary of State any sum notified to them under this sub-paragraph.
- (4) Paragraph 2(1)(g)(i) of Schedule 13 to this Act shall have effect during the period referred to in sub-paragraph (3) above as if the reference to the BBC or the Welsh Authority included a reference to the Authority.
- (5) In this paragraph “the BCC” means the Broadcasting Complaints Commission.

#### *Provisions relating to Broadcasting Standards Council*

- 5 Part VI of this Act shall have effect as if—
- (a) section 152(2) of this Act included a reference to any sound programme broadcast by the Authority in accordance with this Part of this Schedule; and
- (b) the Authority were, in relation to the provision by them of local sound broadcasting services in accordance with this Part of this Schedule, a broadcasting body within the meaning of that Part of this Act.

#### *Supplementary provisions*

- 6 (1) Any code, notice, direction, approval or other thing drawn up, given or done by or in relation to the IBA—
- (a) in pursuance of a provision of the 1981 Act which has effect as from the transfer date in accordance with this Part of this Schedule, and
- (b) in connection with any of the IBA's local sound broadcasting services which are to be provided by the Authority as from that date in accordance with paragraph 1(1) above,
- shall, if in force or effective immediately before that date, have effect as from that date for the relevant purposes as if drawn up, given or done by or in relation to the Authority.
- (2) Anything which immediately before that date was in the process of being done by or in relation to the IBA may, if it was being so done as mentioned in paragraphs (a) and (b) of sub-paragraph (1), be continued on or after that date by or in relation to the Authority.

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- (3) As from that date sections 61 and 62 of the 1981 Act shall have effect for the relevant purposes as if any reference to the IBA were a reference to the Authority.
- (4) In this paragraph “the relevant purposes” means the purposes of the 1981 Act as it has effect as from the transfer date in accordance with this Part of this Schedule.

## PART V

### REPLACEMENT OF PROGRAMME CONTRACTS BY LOCAL LICENCES

*Replacement of contracts to which paragraph 2(1) in Part IV applies by local licences*

- 1 (1) The Authority may, if the programme contractor under a relevant contract so requests—
  - (a) determine the contract as from any time falling on or after the transfer date; and
  - (b) subject to paragraph 3(2) below, grant to the programme contractor as from that time a licence to provide a local service for the locality in which local sound broadcasts were to be provided by him under the contract.
- (2) In sub-paragraph (1) “relevant contract” means a contract which (apart from that sub-paragraph) would continue in force by virtue of paragraph 2(1) in Part IV of this Schedule.
- (3) A licence granted in pursuance of sub-paragraph (1) shall (subject to the provisions of Part III of this Act) continue in force for such period as the Authority may determine, except that the licence shall not expire—
  - (a) before the date on which the contract referred to in that sub-paragraph would have expired if it had not been determined under that sub-paragraph, or
  - (b) later than 31st December 1996 or the date which falls three years after the date referred to in paragraph (a), whichever is the earlier.

*Replacement by local licences of certain contracts for the provision of local sound broadcasts in localities in which such broadcasts were already provided*

- 2 (1) Any contract which—
  - (a) the IBA has, at any time on or after 1st September 1989, entered into with a programme contractor for the provision by the contractor of local sound broadcasts in a locality comprised in the locality in which such broadcasts were for the time being to be provided by another programme contractor under a contract entered into before that time, and
  - (b) is effective immediately before the transfer date,
 shall cease to have effect on that date; but, if the first-mentioned programme contractor so requests at any time before that date, the Authority may, subject to paragraph 3(2) below, grant to him as from that date a licence to provide a local service for that locality.
- (2) A licence granted in pursuance of sub-paragraph (1) shall (subject to the provisions of Part III of this Act) continue in force until 31st December 1994.

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*Common provisions applying to licences granted  
in pursuance of paragraph 1(1) or 2(1) above*

- 3
- (1) A request for the grant of a licence which is made to the Authority by any person in pursuance of paragraph 1(1) or 2(1) above must be in writing and accompanied by—
    - (a) his proposals for providing a service that would cater for the tastes and interests of persons living in the locality for which it would be provided or for any particular tastes and interests of such persons; and
    - (b) such information as the Authority may reasonably require as to his present financial position and his projected financial position during the period for which the licence would be in force.
  - (2) The Authority shall not grant a licence to any person in pursuance of paragraph 1(1) or 2(1) above unless they are satisfied that the service proposed to be provided by that person would cater for the tastes and interests of persons living in the locality for which it would be provided or for any particular tastes and interests of such persons.
  - (3) Section 104 of this Act shall not apply in relation to the grant of any such licence.
  - (4) Section 106(1) of this Act shall apply to any such licence as if for “when making his application” there were substituted “ in pursuance of paragraph 3(1) in Part V of Schedule 11 ”.
  - (5) In section 86(4) of this Act the reference to Part III of this Act shall include a reference to this Part of this Schedule.
  - (6) Except as provided in the preceding provisions of this paragraph, Part III of this Act applies to a licence granted in pursuance of paragraph 1(1) or 2(1) above as it applies to any other local licence granted under that Part.

*Saving for liabilities under terminated contracts*

- 4
- (1) Where the contract of a programme contractor is terminated by the Authority under this Part of this Schedule, the termination of that contract shall not affect any liability of his which has accrued under or by virtue of the contract before its termination.
  - (2) Where any such contract is so terminated but the programme contractor is granted a local licence as from the date of its termination, any agreement—
    - (a) made before that date between the contractor and any other person, and
    - (b) framed (whether expressly or by implication) by reference to the contract or to the contractor's status as a programme contractor,shall (unless it expressly provides otherwise) have effect as from that date with such modifications as are necessary to take account of the replacement of the contract by the licence or of the contractor's new status as the holder of the licence (as the case may require).
  - (3) References in sub-paragraph (2) to an agreement include references—
    - (a) to an oral agreement, and
    - (b) to a deed, bond or other instrument.

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## SCHEDULE 12

Section 134.

### TRANSITIONAL PROVISIONS RELATING TO EXISTING CABLE SERVICES

#### PART I

##### GENERAL

1 (1) In this Schedule—

“the 1984 Act” means the <sup>M86</sup>Cable and Broadcasting Act 1984;

“diffusion service” and “prescribed diffusion service” have the same meaning as in Part I of the 1984 Act;

“local delivery licence” and “local delivery service” have the same meaning as in Part II of this Act;

and in Part III of this Schedule “relevant licence” means a licence to provide a prescribed or other diffusion service in force by virtue of paragraph 1, 3, 5 or 8 in Part II of this Schedule.

- (2) Any order which, immediately before the transfer date, is in force under section 2(3) of the 1984 Act (meaning of “cable programme service” etc.) shall continue in force on and after that date for the purposes of the definition of “prescribed diffusion service” applied by sub-paragraph (1).

#### Marginal Citations

**M86** 1984 c. 46.

- 2 This Schedule applies to a licence granted under section 58 of the <sup>M87</sup>Telecommunications Act 1984 (power of Secretary of State to license cable services) as it applies to one granted under section 4 of the <sup>M88</sup>Cable and Broadcasting Act 1984 (power of Cable Authority to license such services).

#### Marginal Citations

**M87** 1984 c. 12.

**M88** 1984 c. 46.

#### PART II

##### LICENSING OF EXISTING CABLE SERVICES

##### *Prescribed diffusion services: continuation in force of existing licences*

- 1 (1) Subject to paragraph 2 below, any licence to provide a prescribed diffusion service which is in force under Part I of the 1984 Act immediately before the transfer date shall, notwithstanding any repeals made by this Act, continue in force (subject to and in accordance with the provisions of this Schedule) for the remainder of the period specified in the licence.



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- (2) Where any licence continues in force by virtue of sub-paragraph (1), any conditions which—
  - (a) were included in it in pursuance of any provision of the 1984 Act, and
  - (b) were in force immediately before the transfer date,shall similarly continue in force (subject to the provisions of this Schedule), but any reference in the licence to the Cable Authority shall be construed, in relation to any time falling on or after that date, as a reference to the Commission.
- (3) Without prejudice to the generality of paragraph 2(4) in Part III of this Schedule, the Commission may, in accordance with that provision, make such variations of a licence which continues in force by virtue of sub-paragraph (1) above as appear to them to be appropriate in consequence of any of the provisions of this Schedule.

*Prescribed diffusion services: replacement of cable licences by local delivery licences*

- 2 (1) Where—
  - (a) any person is the holder of a licence to provide a prescribed diffusion service, being a licence to which paragraph 1(1) above applies (“the existing licence”), and
  - (b) the closing date for the making of applications for the licence under section 6 of the 1984 Act fell before 7th November 1988,that person may, within the period of six months beginning with the transfer date, request the Commission to grant him a licence under Part II of this Act to provide a local delivery service for the area in which the prescribed diffusion service is authorised to be provided under the existing licence.
- (2) Where any request is duly made to them under sub-paragraph (1), the Commission shall (notwithstanding anything in sections 74 to 76 of this Act) grant the licence applied for; and, on the coming into force of that licence, the existing licence shall cease to have effect.
- (3) A local delivery licence granted in pursuance of this paragraph may authorise the licensed service to be provided by wireless telegraphy to such extent as is specified in the licence.
- (4) Nothing in section 77 of this Act shall apply to such a local delivery licence until such time (if any) as it is renewed in accordance with sub-paragraph (5).
- (5) Section 78 of this Act shall apply to such a local delivery licence as if—
  - (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period of fifteen years beginning with the date of the coming into force of the existing licence;
  - (b) in subsection (4), paragraph (b) were omitted;
  - (c) subsection (5) were omitted;
  - (d) in subsection (6)(b), the words from “a different” to “as” were omitted; and
  - (e) in subsection (9), the reference to any conditions included in the licence in pursuance of section 77 were a reference to any conditions so included in accordance with sub-paragraph (6) below.
- (6) Where such a local delivery licence is to be renewed in accordance with sub-paragraph (5), the Commission shall (notwithstanding section 3(4) of this Act, as applied by section 73(3)) by notice served on the licence holder vary the licence, as

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from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (4).

- (7) Section 3(3) of this Act shall, in its application (in accordance with section 73(3)) to a local delivery licence granted in pursuance of this paragraph, have effect as if the reference to Part I of this Act included a reference to this Part of this Schedule.
- (8) Section 81(3) and (4) of this Act shall not apply in relation to a local delivery licence granted in pursuance of this paragraph.
- (9) Except as provided in the preceding provisions of this paragraph, Part II of this Act applies to a local delivery licence granted in pursuance of this paragraph as it applies to any other such licence granted under that Part.

*Prescribed diffusion services: grant of new licences to provide existing services*

- 3 (1) The Commission may on or after the transfer date grant a licence to provide a prescribed diffusion service (“the new service”) if—
  - (a) the new service would be authorised to be provided in the same area as that in which a prescribed diffusion service (“the existing service”) is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies;
  - (b) the licence to provide the new service would come into force on the expiry of the licence to provide the existing service;
  - (c) the applicant for the licence to provide the new service is the holder of the licence to provide the existing service; and
  - (d) after the expiry of the latter licence there will remain in force under Part II of the <sup>M89</sup>Telecommunications Act 1984 a licence which authorises the running of the telecommunication system by means of which the existing service is provided.
- (2) A licence granted under this paragraph shall be in writing and (subject to the provisions of this Schedule) shall continue in force for such period not exceeding eight years as may be specified in the licence.
- (3) Any such licence may include—
  - (a) such conditions as appear to the Commission to be requisite having regard to the duties imposed on them by virtue of this Schedule;
  - (b) conditions requiring the rendering to the Commission of a payment on the grant of the licence or payments during the currency of the licence (or both) of such amount or amounts as may be determined by or under the licence; and
  - (c) conditions requiring the holder of the licence to furnish to the Commission, in such manner and at such times as they may reasonably require, such information as they may require for the purpose of exercising the functions conferred on them by virtue of this Schedule.
- (4) Without prejudice to the generality of paragraph (a) of sub-paragraph (3), conditions included in a licence by virtue of that paragraph may require the holder of the licence—
  - (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified; or

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- (b) except in so far as the Commission consent to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified.
- (5) Any application for the grant of a licence under this paragraph must be in writing; and in deciding whether to grant such a licence the Commission shall take into account all matters appearing to them to be relevant.
- (6) No person shall, in connection with a particular licence to which paragraph 1(1) above applies, be granted both a licence granted in pursuance of this paragraph and a licence granted in pursuance of paragraph 4 below; and that paragraph shall have effect subject to this sub-paragraph.

#### Marginal Citations

M89 1984 c. 12.

#### *Prescribed diffusion services: cable licences to be succeeded on their expiry by local delivery licences*

- 4 (1) Subject to the following provisions of this paragraph, a person who is the holder of a licence to provide a prescribed diffusion service, being a licence to which paragraph 1(1) above applies (“the existing licence”), may apply to the Commission for the grant, as from the date on which the existing licence is due to expire (“the expiry date”), of a licence under Part II of this Act to provide a local delivery service for the area in which the prescribed diffusion service is authorised to be provided under the existing licence.
- (2) An application under sub-paragraph (1)—
  - (a) may be made by the holder of the existing licence not earlier than five years before the expiry date and not later than the relevant date; and
  - (b) must be in writing and specify—
    - (i) the area which would be covered by the applicant’s proposed local delivery service, and
    - (ii) the technical means by which that service would be provided.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate but not beyond that date.
- (4) In sub-paragraphs (2) and (3) “the relevant date” means the date which the Commission determine to be that by which they would need to publish a notice under section 74 of this Act if they were to grant, as from the expiry date, such a licence under Part II of this Act as is mentioned in sub-paragraph (1).
- (5) Notwithstanding anything in sections 74 to 76 of this Act, where an application under sub-paragraph (1) has been duly made to the Commission, they may only refuse the application if—
  - (a) they propose to grant, as a replacement for the existing licence, a local delivery licence authorising the provision of a local delivery service for an area which would be different from that in which the applicant’s service is authorised to be provided under the existing licence (“the franchise area”); or

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- (b) the applicant is not, at the time when he makes his application, providing a prescribed diffusion service throughout the whole of the franchise area; or
  - (c) it appears to them that the applicant's proposed local delivery service would not cover the whole of the franchise area; or
  - (d) it appears to them that any telecommunication system proposed to be used by the applicant in the provision of that service would not be acceptable to the relevant licensing authorities.
- (6) A local delivery licence granted in pursuance of this paragraph shall come into force on the expiry date.
- (7) Subject to sub-paragraph (8), subsections (6) to (9) of section 78 of this Act shall apply in connection with the grant of an application for a local delivery licence under sub-paragraph (1) above as they apply in connection with the grant of an application for the renewal of a local delivery licence under subsection (1) of that section.
- (8) In the application of those subsections in accordance with sub-paragraph (7)—
- (a) any reference to the renewal of a local delivery licence shall be construed as a reference to the grant of such a licence in pursuance of this paragraph (and related expressions shall be construed accordingly);
  - (b) in subsection (6)(b), the words from “a different” to “as” shall be omitted;
  - (c) in subsection (7), the words “, in accordance with sections 74 to 76, a licence” shall be substituted for “a fresh licence”; and
  - (d) in subsection (8), the words from “formally” to “so” shall be omitted.
- (9) Sub-paragraphs (3) and (7) to (9) of paragraph 2 above shall have effect in relation to a local delivery licence granted in pursuance of this paragraph as they have effect in relation to such a licence granted in pursuance of that paragraph.
- (10) In this paragraph “the relevant licensing authorities” has the same meaning as in section 75 of this Act.

*Other diffusion services: continuation in force of existing licences*

- 5 (1) Subject to paragraph 7(1) below, where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which—
- (a) is not a prescribed diffusion service, but
  - (b) is provided in an area which is comprised in the area in which such a service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies,
- the licence shall, notwithstanding any repeals made by this Act, continue in force (subject to and in accordance with the provisions of this Schedule) for the remainder of the period specified in the licence.
- (2) Where any licence continues in force by virtue of sub-paragraph (1), any conditions which—
- (a) were included in it in pursuance of any provision of the 1984 Act, and
  - (b) were in force immediately before the transfer date,
- shall similarly continue in force (subject to the provisions of this Schedule), but any reference in the licence to the Cable Authority shall be construed, in relation to any time falling on or after that date, as a reference to the Commission.

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- (3) Without prejudice to the generality of paragraph 2(4) in Part III of this Schedule, the Commission may, in accordance with that provision, make such variations of a licence which continues in force by virtue of sub-paragraph (1) above as appear to them to be appropriate in consequence of any of the provisions of this Schedule.
- (4) Where—
- (a) a licence to which sub-paragraph (1) applies (“the relevant licence”) is due to expire on a particular date in accordance with that sub-paragraph (being a date falling within the period specified in sub-paragraph (5)), and
  - (b) it appears to the Commission that on that date there would be in force either—
    - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (1)(b), or
    - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service is for the time being provided under the relevant licence (“the relevant service”), but
  - (c) it also appears to them that on that date the holder of any such licence would not be in a position to provide his licensed service for all of the dwelling-houses for which the relevant service is for the time being provided,
- the Commission shall so vary the relevant licence as to secure that (subject to sub-paragraph (5)) the licence continues in force until such time subsequent to that date as they may specify in a notice given to the holder of the licence; and the Commission shall not specify a time for the purposes of this sub-paragraph unless they have reasonable grounds for believing that, at that time, the holder of any such licence as is mentioned in paragraph (b)(i) or (ii) above would be in a position to provide his licensed service for all of the dwelling-houses referred to in paragraph (c) above.
- (5) A licence to which sub-paragraph (1) applies shall not continue in force in accordance with that sub-paragraph or sub-paragraph (4) beyond the end of the period of eight years beginning with the transfer date.
- (6) If on the date when such a licence ceases to be in force (“the expiry date”) either of the conditions specified in sub-paragraph (7) is satisfied, the holder of that licence (“the relevant licence”) shall be granted by the Commission, as from the expiry date, a licence under Part II of this Act to provide a local delivery service for the area in which a diffusion service was being provided under the relevant licence immediately before that date.
- (7) The conditions referred to in sub-paragraph (6) are—
- (a) that neither of the following is in force, namely—
    - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (1)(b), or
    - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service was being provided under the relevant licence immediately before the expiry date;
  - (b) that any such licence as is mentioned in paragraph (a)(i) or (ii) above is in force but it appears to the Commission that the holder of the licence is not in a position to provide his licensed service for all of the dwelling-houses for which a diffusion service was being provided under the relevant licence immediately before the expiry date.

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- (8) Subject to sub-paragraph (9), the following provisions, namely—
- (a) sub-paragraphs (7) to (9) of paragraph 2 above, and
  - (b) sub-paragraphs (2) to (5) of paragraph 6 below,
- shall have effect in relation to a local delivery licence granted in pursuance of sub-paragraph (6) above as they have effect in relation to such a licence granted in pursuance of paragraph 2 above or (as the case may be) paragraph 6 below.
- (9) In its application in relation to a licence granted in pursuance of sub-paragraph (6), paragraph 6(4)(a) shall have effect with the substitution of a reference to the date as from which the licence is granted for the reference to the transfer date.

*Other diffusion services: replacement of cable licences by local delivery licences*

- 6 (1) Subject to paragraph 7(1) below, where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which is neither—
- (a) a prescribed diffusion service, nor
  - (b) a diffusion service to which paragraph 5(1) above applies,
- the licence shall cease to have effect on the transfer date; but the holder of the licence shall be granted by the Commission as from that date a licence under Part II of this Act to provide a local delivery service for the area in which the diffusion service was authorised to be provided immediately before that date.
- (2) So much of section 73(2) of this Act as relates to the provision of local delivery services by wireless telegraphy shall not apply to a local delivery licence granted in pursuance of this paragraph.
- (3) Any local delivery licence granted in pursuance of this paragraph shall be so granted notwithstanding anything in sections 74 to 76 of this Act; and nothing in section 77 of this Act shall apply to such a local delivery licence until such time (if any) as it is renewed in accordance with sub-paragraph (4).
- (4) Section 78 of this Act shall apply to such a local delivery licence as if—
- (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period of five years beginning with the transfer date, and the second reference to a period of fifteen years were a reference to a period of five years;
  - (b) in subsection (2), the reference to five years were a reference to three years;
  - (c) in subsection (4), paragraph (b) were omitted;
  - (d) subsection (5) were omitted;
  - (e) in subsection (6)(b), the words from “a different” to “as” were omitted; and
  - (f) in subsection (9), the reference to any conditions included in the licence in pursuance of section 77 were a reference to any conditions so included in accordance with sub-paragraph (5).
- (5) Where such a local delivery licence is to be renewed in accordance with sub-paragraph (4), the Commission shall (notwithstanding section 3(4) of this Act, as applied by section 73(3)) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (3).

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- (6) Sub-paragraphs (7) to (9) of paragraph 2 above shall have effect in relation to a local delivery licence granted in pursuance of this paragraph as they have effect in relation to such a licence granted in pursuance of that paragraph.

*Other diffusion services: certain licences to cease to have effect*

- 7 (1) Neither paragraph 5(1) nor paragraph 6(1) above applies to a licence to provide a diffusion service—
- (a) for a single building, or
  - (b) in an area in which there are not more than the prescribed number of dwelling-houses;
- and any such licence shall cease to have effect on the transfer date.
- (2) In sub-paragraph (1) “the prescribed number” means such number as the Secretary of State may by order prescribe; and any order under this sub-paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Other diffusion services: certain unlicensed services to be licensed as cableservices or local delivery services*

- 8 (1) This paragraph has effect in relation to any diffusion service—
- (a) which immediately before the transfer date is, by virtue of paragraph 1 of the Schedule to the <sup>M90</sup>Cable Programme Services (Exceptions) Order 1988, not required to be licensed under Part I of the 1984 Act; and
  - (b) which is for the time being provided by means of a telecommunication system which has not previously been used for the purpose of providing a service licensed under that Part of that Act; but
  - (c) which on that date either—
    - (i) constitutes a local delivery service for the purposes of Part II of this Act, or
    - (ii) is specified in an order made by the Secretary of State.
- (2) Where immediately before that date any such service (“the relevant service”) is provided in an area which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies, the Commission shall, if the person providing the relevant service so requests before that date, grant that person as from that date a licence to provide a diffusion service in the area in which the relevant service was being provided immediately before that date.
- (3) A licence granted under sub-paragraph (2) shall be in writing and (subject to the provisions of this Schedule) shall continue in force for the period of five years beginning with the transfer date.
- (4) Sub-paragraphs (3) and (4) of paragraph 3 above shall apply to a licence granted under sub-paragraph (2) as they apply to a licence granted under that paragraph.
- (5) Where—
- (a) a licence granted under sub-paragraph (2) (“the relevant licence”) is due to expire on a particular date in accordance with sub-paragraph (3), and
  - (b) it appears to the Commission that on that date there would be in force either—

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- (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (2), or
  - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service is for the time being provided under the relevant licence (“the relevant service”), but
  - (c) it also appears to them that on that date the holder of any such licence would not be in a position to provide his licensed service for all of the dwelling-houses for which the relevant service is for the time being provided,
- the Commission shall so vary the relevant licence as to secure that (subject to sub-paragraph (6)) the licence continues in force until such time subsequent to that date as they may specify in a notice given to the holder of the licence; and the Commission shall not specify a time for the purposes of this sub-paragraph unless they have reasonable grounds for believing that, at that time, the holder of any such licence as is mentioned in paragraph (b)(i) or (ii) above would be in a position to provide his licensed service for all of the dwelling-houses referred to in paragraph (c) above.
- (6) A licence granted under sub-paragraph (2) shall not continue in force in accordance with sub-paragraph (5) beyond the end of the period of eight years beginning with the transfer date.
  - (7) If on the date when such a licence ceases to be in force (“the expiry date”) either of the conditions specified in sub-paragraph (8) is satisfied, the holder of that licence (“the relevant licence”) shall be granted by the Commission, as from the expiry date, a licence under Part II of this Act to provide a local delivery service for the area in which a diffusion service was being provided under the relevant licence immediately before that date.
  - (8) The conditions referred to in sub-paragraph (7) are—
    - (a) that neither of the following is in force, namely—
      - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (2), or
      - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service was being provided under the relevant licence immediately before the expiry date;
    - (b) that any such licence as is mentioned in paragraph (a)(i) or (ii) above is in force but it appears to the Commission that the holder of the licence is not in a position to provide his licensed service for all of the dwelling-houses for which a diffusion service was being provided under the relevant licence immediately before the expiry date.
  - (9) Where immediately before the transfer date any such diffusion service as is mentioned in sub-paragraph (1) above is not being provided in any such area as is mentioned in sub-paragraph (2), the Commission shall, if the person providing the service so requests before that date, grant that person as from that date a licence under Part II of this Act to provide a local delivery service for the area in which the diffusion service was being provided immediately before that date.
  - (10) Subject to sub-paragraph (11), the following provisions, namely—
    - (a) sub-paragraphs (7) to (9) of paragraph 2 above, and
    - (b) sub-paragraphs (2) to (5) of paragraph 6 above,



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shall have effect in relation to a local delivery licence granted in pursuance of sub-paragraph (7) or (9) above as they have effect in relation to such a licence granted in pursuance of paragraph 2 or (as the case may be) paragraph 6 above.

- (11) In its application in relation to a licence granted in pursuance of sub-paragraph (7) above, paragraph 6(4)(a) shall have effect with the substitution of a reference to the date as from which the licence is granted for the reference to the transfer date.
- (12) In the case of a local delivery licence granted in pursuance of sub-paragraph (9) above, nothing in paragraph 1(1) in Part II of Schedule 2 to this Act shall have the effect of rendering—
- (a) a local authority, or
  - (b) a body which is controlled by such an authority,
- a disqualified person in relation to the licence during the period of five years beginning with the date of its coming into force; and in this sub-paragraph “local authority” has the same meaning as in that Schedule.

#### Marginal Citations

M90 S.I. 1988/1370.

#### *Other diffusion services: services falling partly within and partly outside franchise areas*

- 9 (1) Where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which—
- (a) is not a prescribed diffusion service, but
  - (b) is provided in an area (“the relevant area”) only part of which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) applies (“the franchise area”),
- then (subject to paragraph 7 above)—
- (i) paragraph 5 above shall apply to the licence to the extent that it authorises the provision of a diffusion service in so much of the relevant area as is comprised in the franchise area, and
  - (ii) paragraph 6(1) above shall apply to the licence to the extent that it authorises the provision of such a service in so much of the relevant area as is not so comprised.
- (2) The reference in paragraph 6(1) to the area in which a diffusion service was authorised to be provided immediately before the transfer date shall accordingly be construed, in relation to a licence to which sub-paragraph (1) above applies, as a reference to so much of that area as is not comprised in the franchise area.
- (3) The reference in paragraph 7(1) above to a licence to provide a diffusion service shall be construed, in relation to a licence to which sub-paragraph (1) above applies—
- (a) in connection with the application of paragraph 5(1) above, as a reference to the licence to the extent that it authorises the provision of such a service as is mentioned in sub-paragraph (1)(i) above; and
  - (b) in connection with the application of paragraph 6(1) above, as a reference to the licence to the extent that it authorises the provision of such a service as is mentioned in sub-paragraph (1)(ii) above.

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- (4) Where immediately before the transfer date any such diffusion service as is mentioned in paragraph 8(1) above is provided in an area (“the relevant area”) only part of which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies (“the franchise area”), then (subject to sub-paragraph (5) below)—
- (a) paragraph 8(2) above shall apply to the service to the extent that it is, immediately before that date, being provided in so much of the relevant area as is comprised in the franchise area, and
  - (b) paragraph 8(9) above shall apply to the service to the extent that it is then being provided in so much of the relevant area as is not so comprised.
- (5) Neither paragraph 8(2) nor paragraph 8(9) shall apply to a diffusion service in accordance with sub-paragraph (4) above if the part of the service to which it would otherwise so apply would serve only—
- (a) a single building, or
  - (b) an area in which there are not more than the prescribed number of dwelling-houses;
- and in paragraph (b) “the prescribed number” has the same meaning as in paragraph 7(1) above.

*Restricted services: replacement of existing licences*

- 10 (1) Where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a restricted service (“the restricted service licence”), the licence shall cease to have effect on the transfer date; but if he makes the appropriate request before that date the holder of the licence shall—
- (a) where the restricted service consists in the provision of television programmes, be granted by the Commission as from that date a licence under Part I of this Act to provide a licensable programme service, or
  - (b) where the restricted service consists in the provision of sound programmes, be granted by the Radio Authority as from that date a licence under Part III of this Act to provide a licensable sound programme service,
- being a service of such a description as will, in the opinion of the Commission or (as the case may be) the Radio Authority, enable the service to be provided under the licence mentioned in paragraph (a) or (b) to correspond as nearly as possible to the service provided under the restricted service licence.
- (2) In sub-paragraph (1) “the appropriate request”—
- (a) in a case to which paragraph (a) of that sub-paragraph applies, means a request to the Commission; and
  - (b) in a case to which paragraph (b) of that sub-paragraph applies, means a request to the Radio Authority.
- (3) Nothing in section 47(1) to (3) or (as the case may be) section 86(3)(b) or 113(1) or (2) of this Act shall apply in relation to a licence granted in pursuance of sub-paragraph (1); and any such licence shall (subject to the provisions of Part I or, as the case may be, Part III of this Act) continue in force for the remainder of the period specified in the restricted service licence.
- (4) Section 3(3) of this Act shall, in its application to a licence granted in pursuance of sub-paragraph (1)(a), have effect as if the reference to Part I of this Act included a reference to this Part of this Schedule; and section 86(4) of this Act shall, in its

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application to a licence granted in pursuance of sub-paragraph (1)(b), have effect as if the reference to Part III of this Act included a reference to this Part of this Schedule.

- (5) Except as provided in sub-paragraphs (3) and (4)—
- (a) Part I of this Act applies to a licence granted in pursuance of sub-paragraph (1)(a) as it applies to any other licence granted under that Part to provide a licensable programme service; and
  - (b) Part III of this Act applies to a licence granted in pursuance of sub-paragraph (1)(b) as it applies to any other licence granted under that Part to provide a licensable sound programme service.
- (6) In this paragraph—
- “licensable programme service” has the same meaning as in Part I of this Act;
  - “licensable sound programme service” has the same meaning as in Part III of this Act;
  - “restricted service” has the same meaning as in Part I of the 1984 Act.

#### *Requests made under this Part*

- 11 Any request made to the Commission in pursuance of any provision of this Part of this Schedule must be in writing.

#### *Saving for liabilities under terminated licences*

- 12 (1) Where any licence ceases to have effect at any time on or after the transfer date by virtue of any provision of this Part of this Schedule, any liability of the licence holder which has accrued before that time under or by virtue of the licence shall not be affected by the licence so ceasing to have effect.
- (2) Where any such licence (“the existing licence”) so ceases to have effect but the licence holder is granted in its place a licence (“the new licence”) in pursuance of any provision of this Part of this Schedule, any agreement—
- (a) made between the licence holder and any other person before the time when the existing licence so ceases to have effect, and
  - (b) framed (whether expressly or by implication) by reference to the existing licence or to the licence holder’s status as the holder of that licence,
- shall (unless it expressly provides otherwise) have effect as from that time with such modifications as are necessary to take account of the replacement of the existing licence by the new licence or of the licence holder’s new status as the holder of the new licence (as the case may require).
- (3) References in sub-paragraph (2) to an agreement include references—
- (a) to an oral agreement, and
  - (b) to a deed, bond or other instrument.

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### PART III

#### PROVISIONS RELATING TO LICENCES IN FORCE UNDER OR BY VIRTUE OF THIS SCHEDULE

##### *Effect of relevant licences*

- 1 (1) Subject to sub-paragraph (4) below, a relevant licence shall have effect only so as to authorise the provision of a service consisting in the use of a telecommunication system for the purpose of the delivery of one or more of the following, namely—
- (a) any of the services specified in section 72(2) of this Act, or
  - (b) any television or local sound broadcasting service provided by the Commission or the Radio Authority in accordance with Schedule 11 to this Act,
- for simultaneous reception in dwelling-houses in the area for which the licensed service is to be provided.
- (2) Accordingly the holder of any such licence shall not be subject to regulation under Part I or Part III of this Act as respects the programmes included in any service delivered by the telecommunication system in question except—
- (a) to the extent that he is to be regarded for the purposes of that Part of this Act as providing any such service, or
  - (b) in the case of Part I, in consequence of sub-paragraph (3)(b) below.
- (3) In section 79 of this Act—
- (a) subsection (1) shall apply to the holder of a relevant licence and the service authorised to be provided under such a licence (“a licensed diffusion service”) as it applies to the holder of a local delivery licence and his local delivery service; and
  - (b) subsections (2) and (3) shall apply to a licensed diffusion service as they apply to a licensed local delivery service.
- (4) The holder of a relevant licence shall be taken to be authorised by his licence to include in his licensed diffusion service advertisements which are inserted by him and are not included in any service falling within section 72(2) of this Act; but, if any such advertisements are so included by him, sections 8 and 9 of this Act shall have effect as if the delivery of those advertisements constituted the provision of a service licensed under Part I of this Act and he were the holder of a licence in force under that Part.
- (5) Section 80 of this Act shall apply to the holder of a relevant licence as it applies to the holder of a local delivery licence.
- (6) Section 82(1) of this Act shall not apply to any local delivery service which is a licensed diffusion service.

##### *General provisions about relevant licences*

- 2 (1) It shall be the duty of the Commission to discharge their functions under this Schedule as respects the licensing of diffusion services in the manner which they consider is best calculated to ensure fair and effective competition in the provision of such services and services connected with them.
- (2) The Commission—

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- (a) shall not grant a licence to any person under paragraph 3 or 8(2) in Part II of this Schedule unless they are satisfied that he is a fit and proper person to hold it; and
- (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a relevant licence, that person does not remain the holder of the licence;

and nothing in that Part of this Schedule shall be construed as affecting the operation of this sub-paragraph or paragraph 3 below.

- (3) The payment or payments required to be rendered to the Commission—
  - (a) in the case of a licence which continues in force by virtue of paragraph 1 or 5 in Part II of this Schedule, by virtue of conditions included in it in pursuance of section 4(5)(b) of the 1984 Act, or
  - (b) by virtue of conditions included in a licence in pursuance of paragraph 3(3)(b) or 8(4) in Part II of this Schedule,shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of the licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to this Act.
- (4) The Commission may vary a relevant licence by a notice served on the holder of the licence if—
  - (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Commission about the variation.
- (5) The Commission shall not under sub-paragraph (4)—
  - (a) vary the period for which a licence to provide a prescribed diffusion service is to continue in force if that period, as varied, would exceed—
    - (i) fifteen years in the case of a licence to which section 4(4)(a) of the 1984 Act applied immediately before the transfer date, or
    - (ii) eight years in the case of any other licence, or
  - (b) vary the period for which—
    - (i) a licence to which paragraph 5(1) in Part II of this Schedule applies, or
    - (ii) a licence granted in pursuance of paragraph 8(2) in that Part,is to continue in force.
- (6) Sub-paragraph (4)(a) does not apply to any variation effected in accordance with paragraph 5(4) or 8(5) in Part II of this Schedule; but any such variation shall be effected by means of a notice served by the Commission on the holder of the licence in question.
- (7) Section 3(6) and (7) of this Act shall apply to a relevant licence as they apply to a licence granted under Part II of this Act.

*Restrictions on the holding of certain relevant licences*

- 3 (1) The Commission shall do all that they can to secure that none of the following, namely—

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- (a) a local authority,
  - (b) a body whose objects are wholly or mainly of a religious or political nature,
  - (c) an individual who is an officer of a body falling within paragraph (b) above, or
  - (d) a body which is controlled by a person falling within any of the preceding paragraphs, or by two or more such persons taken together,
- becomes or remains the holder of a licence to which this paragraph applies.
- (2) The Commission shall do all that they can to secure that a person who is (or is an associate of)—
- (a) a programme contractor for the provision of television programmes or sound broadcasts for any area or locality,
  - (b) the holder of a licence to provide a regional Channel 3 service or a local radio service for any area or locality, or
  - (c) the proprietor of a local newspaper circulating wholly or mainly in any area,
- does not become or remain the holder of a licence to which this paragraph applies if the service to be provided under that licence is to be so provided in any part of that area or locality.
- (3) The Commission shall do all that they can to secure that a person who is (or is an associate of) the holder of a licence to provide Channel 5 does not become or remain the holder of a licence to which this paragraph applies if the service to be provided under that licence is to be so provided in any part of the area for which the Channel 5 service is to be provided.
- (4) The Commission shall do all that they can to secure that a body corporate in which—
- (a) any of the persons mentioned in sub-paragraph (5) is a participant, or
  - (b) any of the persons mentioned in sub-paragraph (6) is a principal participant,
- does not become or remain the holder of a licence to which this paragraph applies if, in the opinion of the Commission, that person's participation in the body corporate has led, is leading or is likely to lead to results which are adverse to the public interest.
- (5) The persons referred to in sub-paragraph (4)(a) are—
- (a) a local authority;
  - (b) a body whose objects are wholly or mainly of a religious or political nature;
  - (c) the BBC and the Welsh Authority; and
  - (d) a body which is controlled by a person falling within any of the preceding paragraphs, or by two or more such persons taken together.
- (6) The persons referred to in sub-paragraph (4)(b) are—
- (a) a person who is a principal participant in another body corporate which is—
    - (i) the holder of a licence to which this paragraph applies, or
    - (ii) the holder of a local delivery licence;
  - (b) a programme contractor;
  - (c) the holder of a licence to provide any of the following services, namely a Channel 3 service, Channel 4, Channel 5, <sup>F229</sup> . . . , a national radio service or a local radio service;
  - (d) the proprietor of a national or local newspaper;
  - (e) an advertising agent;
  - (f) an associate of a person falling within any of the preceding paragraphs;

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- (g) a person who has control over a body falling within any of the preceding paragraphs; and
  - (h) a body which is controlled by a person falling within any of paragraphs (a) to (f) above, or by two or more such persons taken together.
- (7) This paragraph applies to any relevant licence authorising the provision of a prescribed diffusion service.
- (8) In this paragraph—
- (a) “associate”, “local authority” and “participant” have the same meaning as in Schedule 2 to this Act, and “principal participant”, in relation to a body corporate, means a person who (whether alone or jointly with one or more other persons, and whether directly or through one or more nominees) holds or is beneficially entitled to not less than one-twentieth of the shares, or possesses not less than one-twentieth of the voting power, in that body corporate;
  - (b) any reference to a national or local newspaper is a reference to a newspaper which is, or is to be treated as, a national or local newspaper for the purposes of Part IV of that Schedule;
  - (c) “programme contractor” has the same meaning as in the <sup>M91</sup>Broadcasting Act 1981;
  - (d) any reference to a Channel 3 service (whether regional or otherwise), [<sup>F230</sup>or to Channel 4 or 5] shall be construed in accordance with section 71(1) of this Act; and
  - (e) any reference to a national or local radio service is a reference to a national or local service within the meaning of Part III of this Act.

#### Textual Amendments

**F229** Words in Sch. 12 Pt. III para. 3(6)(c) repealed (11.7.1997) by S.I. 1997/1682, art. 2, Sch. para. 17(a)

**F230** Words in Sch. 12 Pt. III para. 3(8)(d) substituted (11.7.1997) by S.I. 1997/1682, art. 2, Sch. para. 17(b)

#### Marginal Citations

**M91** 1981 c. 68.

#### *Inclusion of broadcasts in licensed services*

- [<sup>F231</sup>4 (1) The Commission shall do all that they can to secure that, subject to sub-paragraph (2) and to any exceptions for which the Secretary of State, after consultation with the Commission, the BBC and the Welsh Authority, may by order provide, every diffusion service provided by any person in any area under a relevant licence includes, by the reception and immediate re-transmission of the broadcasts, the programmes included in each relevant service provided for reception in that area.
- (2) The Commission may exempt any diffusion service from the requirement to include any relevant service if it appears to the Commission that, at the place where the holder of the licence to provide the diffusion service receives or would receive the relevant service, the relevant service is not capable of being received at a level satisfying such technical standards as the Commission may from time to time determine.
- (3) Where a relevant service provided for reception in an area for which a diffusion service is provided consists in the broadcasting for simultaneous reception of

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programmes contained in two or more programme schedules, then, so far as relating to that relevant service, the duty in sub-paragraph (1) shall be subject to the limitation in whichever of sub-paragraphs (4) and (5) is appropriate.

- (4) Where the programmes contained in one of the programme schedules are broadcast for reception in a greater part of the area than the programmes contained in the other schedule or any of the other schedules, the duty in sub-paragraph (1) so far as so relating shall extend only to the programmes contained in the first-mentioned schedule.
- (5) Where sub-paragraph (4) does not apply, the duty in sub-paragraph (1) so far as so relating shall extend only to the programmes contained in such one of the programme schedules as the relevant broadcasting body may determine.
- (6) For the purposes of this paragraph Channel 3 shall be taken to be a single service consisting in the broadcasting for simultaneous reception of programmes contained in several programme schedules.
- (7) Each person providing a relevant service (“the broadcaster”) shall provide any person providing a diffusion service with such assistance as he may reasonably require in relation to the technical arrangements for the re-transmission in pursuance of this paragraph of the broadcasts of that broadcaster.
- (8) In this paragraph—
  - “the relevant broadcasting body” means—
    - (a) in relation to any service provided by the BBC, the BBC, and
    - (b) in relation to any service licensed by the Commission, the Commission;
  - “relevant service” means any of the following services—
    - (a) Channel 3, Channel 4 and S4C,
    - (b) the teletext service referred to in section 49(2) of this Act, and
    - (c) the two television broadcasting services provided by the BBC on the passing of the Broadcasting Act 1996 and the teletext service provided by the BBC at that time.
- (9) Expressions used in sub-paragraphs (6) and (8) and in Part I of this Act have the same meaning in those sub-paragraphs as in that Part.
- (10) An order under sub-paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F231** Sch. 12 Pt. III paras. 4, 4A substituted (1.10.1996) for para. 4 by 1996 c. 55, s. 91(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

[<sup>F232</sup>4A(1) Where the Commission are satisfied, in the case of any diffusion service which is provided under a relevant licence and by means of which one or more of the services specified in section 72(2) of this Act is delivered in digital form, that it would be appropriate, having regard to the extent of the use and proposed use of digital technology in the provision of the service, for the service to be treated as a digital diffusion service for the purposes of this paragraph, they shall serve a notice to that effect on the holder of the licence to provide the service; and in this paragraph “digital diffusion service” means a diffusion service in respect of which such a notice has been served.]



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- (2) Subsections (2) to (8) of section 78A of this Act shall have effect in relation to a digital diffusion service as they have effect in relation to a digital local delivery service (within the meaning of that section); and nothing in paragraph 4 shall have effect in relation to a digital diffusion service.]

#### Textual Amendments

**F232** Sch. 12 Pt. III paras. 4, 4A substituted (1.10.1996) for para. 4 by 1996 c. 55, s. 91(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

#### *Inclusion of local material in prescribed diffusion services*

- 5 (1) In the case of a licence which continues in force by virtue of paragraph 1 in Part II of this Schedule, nothing in this Schedule shall be construed as prejudicing the operation of any conditions included in the licence which—
- (a) were included in it in pursuance of section 4(5)(a) of the 1984 Act, and
  - (b) relate to the inclusion of such programmes, or to assisting such organisations, as are mentioned in section 7(2)(f) of that Act.
- (2) Where—
- (a) any licence (“the new licence”) is granted under paragraph 3 in Part II of this Schedule, and
  - (b) the licence to provide the existing service (within the meaning of that paragraph) included any such conditions as are mentioned in subparagraph (1) above,
- the new licence shall include conditions corresponding to those conditions.

#### *Revocation of licences*

- 6 (1) Every relevant licence shall contain all such provisions as the Commission consider requisite or expedient to ensure that—
- (a) if, in view of any failure by the licence holder to comply with any condition of the licence or any direction given by the Commission, the Commission consider it necessary to do so in the public interest, or
  - (b) where the licence authorises the provision of a prescribed diffusion service, if the Commission consider it necessary to do so for the purpose of complying with paragraph 3 above, or
  - (c) where—
    - (i) the licence holder is a body, and
    - (ii) any change affecting the nature or characteristics of the body, or any change in the persons having control over or interests in the body, has taken place after the granting of the licence, and
    - (iii) the change is such that, if it fell to the Commission to determine whether to grant the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from granting the licence to the body,
- the Commission may revoke the licence by notice given to the licence holder and taking effect forthwith or on a date specified in the notice.

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- (2) Before revoking a licence under a provision included in a licence in pursuance of sub-paragraph (1), the Commission shall—
- (a) give the licence holder a reasonable opportunity of making representations to them about the matters complained of; and
  - (b) consult the licensing authorities for the purposes of the <sup>M92</sup>Telecommunications Act 1984.

#### Marginal Citations

**M92** 1984 c. 12.

#### Supplementary provisions

- 7 (1) Any notice, direction or other thing given or done by or in relation to the Cable Authority—
- (a) in pursuance of section 4(5) or 17 of the 1984 Act, and
  - (b) in connection with any licence which continues in force as from the transfer date by virtue of paragraph 1 or 5 in Part II of this Schedule,
- shall, if in force or effective immediately before that date, have effect as from that date as if given or done by or in relation to the Commission.
- (2) Anything which immediately before that date was in the process of being done by or in relation to the Cable Authority may, if it was being so done as mentioned in paragraphs (a) and (b) of sub-paragraph (1), be continued on or after that date by or in relation to the Commission.

#### <sup>F233</sup>SCHEDULE 13

#### Textual Amendments

**F233** Sch. 13 repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**

#### <sup>F235</sup>SCHEDULE 14

#### Textual Amendments

**F235** Sch. 14 repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**

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## SCHEDULE 15

Section 162.

### APPLICATION OF 1959 ACT TO TELEVISION AND SOUND PROGRAMMES

#### *Interpretation*

- 1 In this Schedule—
- “the 1959 Act” means the <sup>M97</sup>Obscene Publications Act 1959;
  - “relevant programme” means a programme included in a programme service;
- and other expressions used in this Schedule which are also used in the 1959 Act have the same meaning as in that Act.

#### **Marginal Citations**

**M97** 1959 c. 66.

#### *Liability of person providing live programme material*

- 2 Where—
- (a) any matter is included by any person in a relevant programme in circumstances falling within section 1(5) of the 1959 Act, and
  - (b) that matter has been provided, for inclusion in that programme, by some other person,
- the 1959 Act shall have effect as if that matter had been included in that programme by that other person (as well as by the person referred to in sub-paragraph (a)).

#### *Obscene articles kept for inclusion in programmes*

- 3 It is hereby declared that where a person has an obscene article in his ownership, possession or control with a view to the matter recorded on it being included in a relevant programme, the article shall be taken for the purposes of the 1959 Act to be an obscene article had or kept by that person for publication for gain.

#### *Requirement for consent of Director of Public Prosecutions*

- 4 (1) Proceedings for an offence under section 2 of the 1959 Act for publishing an obscene article shall not be instituted except by or with the consent of the Director of Public Prosecutions in any case where—
- (a) the relevant publication, or
  - (b) the only other publication which followed from the relevant publication, took place in the course of the inclusion of a programme in a programme service; and in this sub-paragraph “the relevant publication” means the publication in respect of which the defendant would be charged if the proceedings were brought.
- (2) Proceedings for an offence under section 2 of the 1959 Act for having an obscene article for publication for gain shall not be instituted except by or with the consent of the Director of Public Prosecutions in any case where—
- (a) the relevant publication, or

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- (b) the only other publication which could reasonably have been expected to follow from the relevant publication,
- was to take place in the course of the inclusion of a programme in a programme service; and in this sub-paragraph “the relevant publication” means the publication which, if the proceedings were brought, the defendant would be alleged to have had in contemplation.
- (3) Without prejudice to the duty of a court to make an order for the forfeiture of an article under section 1(4) of the <sup>M98</sup>Obscene Publications Act 1964 (orders on conviction), in a case where by virtue of sub-paragraph (2) above proceedings under section 2 of the 1959 Act for having an article for publication for gain could not be instituted except by or with the consent of the Director of Public Prosecutions, no order for the forfeiture of the article shall be made under section 3 of the 1959 Act (power of search and seizure) unless the warrant under which the article was seized was issued on an information laid by or on behalf of the Director of Public Prosecutions.

#### Marginal Citations

M98 1964 c. 74.

#### Defences

- 5 (1) A person shall not be convicted of an offence under section 2 of the 1959 Act in respect of the inclusion of any matter in a relevant programme if he proves that he did not know and had no reason to suspect that the programme would include matter rendering him liable to be convicted of such an offence.
- (2) Where the publication in issue in any proceedings under that Act consists of the inclusion of any matter in a relevant programme, section 4(1) of that Act (general defence of public good) shall not apply; but—
- (a) a person shall not be convicted of an offence under section 2 of that Act, and
- (b) an order for forfeiture shall not be made under section 3 of that Act,
- if it is proved that the inclusion of the matter in question in a relevant programme is justified as being for the public good on the ground that it is in the interests of—
- (i) drama, opera, ballet or any other art,
- (ii) science, literature or learning, or
- (iii) any other objects of general concern.
- (3) Section 4(2) of that Act (admissibility of opinions of experts) shall apply for the purposes of sub-paragraph (2) above as it applies for the purposes of section 4(1) and (1A) of that Act.

#### Exclusion of proceedings under common law

- 6 Without prejudice to section 2(4) of the 1959 Act, a person shall not be proceeded against for an offence at common law—
- (a) in respect of a relevant programme or anything said or done in the course of such a programme, where it is of the essence of the common law offence that the programme or (as the case may be) what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or

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- (b) in respect of an agreement to cause a programme to be included in a programme service or to cause anything to be said or done in the course of a programme which is to be so included, where the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.

## SCHEDULE 16

Section 171.

AMENDMENTS OF THE <sup>M99</sup>MARINE, &C., BROADCASTING (OFFENCES) ACT 1967**Modifications etc. (not altering text)**

**C80** Sch. 16 extended (with modifications) (Guernsey) (1.6.1994) by S.I. 1994/1064, art. 3(2), Sch. Pt. II

**Marginal Citations**

**M99** 1967 c. 41.

- 1 (1) Section 2 (prohibition of broadcasting from marine structures) shall be amended as follows.
- (2) In subsection (1)(a), for “external waters or in tidal waters in the United Kingdom” substitute “ any waters to which this section applies ”.
- (3) After subsection (2) insert the following subsection—
- “(3) This section applies to—
- (a) tidal waters in the United Kingdom;
  - (b) external waters; and
  - (c) waters in a designated area within the meaning of the Continental Shelf Act 1964.”
- 2 After section 2 insert the following section—
- “2A Unlawful broadcasting from within prescribed areas of the high seas.**
- (1) Subject to subsection (4) below, it shall not be lawful to make a broadcast which—
- (a) is made from a ship (other than one registered in the United Kingdom, the Isle of Man or any of the Channel Islands) while the ship is within any area of the high seas prescribed for the purposes of this section by an order made by the Secretary of State; and
  - (b) is capable of being received in, or causes interference with any wireless telegraphy in, the United Kingdom.
- (2) If a broadcast is made from a ship in contravention of subsection (1) above, the owner of the ship, the master of the ship and every person who operates, or participates in the operation of, the apparatus by means of which the broadcast is made shall be guilty of an offence.
- (3) A person who procures the making of a broadcast in contravention of subsection (1) above shall be guilty of an offence.

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- (4) The making of a broadcast does not contravene subsection (1) above if it is shown to have been authorised under the law of any country or territory outside the United Kingdom.
- (5) Any order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- 3 In section 3 (prohibition of acts connected with broadcasting from certain ships and aircraft, and from marine structures outside the United Kingdom)—
- (a) in subsection (1), at the beginning insert “ Subject to subsection (1A) below, ” and
- (b) after subsection (1) insert the following subsection—
- “(1A) Subsection (1)(a) above does not apply to any broadcast made in contravention of section 2A(1) of this Act, and subsections (1)(c) and (d) above do not apply to structures or other objects in waters falling within section 2(3)(c) of this Act.”
- 4 After section 3 insert the following section—
- “3A Prohibition of management of stations broadcasting from ships, aircraft etc.**
- (1) Any person who, from any place in the United Kingdom or external waters, participates in the management, financing, operation or day-to-day running of any broadcasting station by which broadcasts are made—
- (a) in contravention of section 1, 2 or 2A(1) of this Act, or
- (b) as mentioned in section 3(1)(a) of this Act,
- shall be guilty of an offence.
- (2) In this section “broadcasting station” means any business or other operation (whether or not in the nature of a commercial venture) which is engaged in the making of broadcasts.”
- 5 (1) Section 4 (prohibition of acts facilitating broadcasting from ships, aircraft etc.) shall be amended as follows.
- (2) In subsection (1), after paragraph (a) insert—
- “(aa) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from any structure or other object (not being a ship or aircraft) in waters falling within section 2(3)(c) of this Act, he does the act on that structure or other object within those waters; or
- (ab) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from a ship in contravention of section 2A(1) of this Act, he does the act in that ship within any such area of the high seas as is mentioned in paragraph (a) of that provision; or”.
- (3) In subsection (3)(e), for “or 2(1)” substitute “ , 2(1) or 2A(1) ”.
- 6 (1) Section 5 (prohibition of acts relating to matter broadcast from ships, aircraft etc.) shall be amended as follows.
- (2) In subsection (1), after paragraph (a) insert—

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- “(aa) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from any structure or other object (not being a ship or aircraft) in waters falling within section 2(3)(c) of this Act, he does the act on that structure or other object within those waters; or
  - (ab) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from a ship in contravention of section 2A(1) of this Act, he does the act in that ship within any such area of the high seas as is mentioned in paragraph (a) of that provision; or”.
- (3) In subsections (3)(a) and (4), for “or 2(1)”, in each place where those words occur, substitute “, 2(1) or 2A(1) ”.
- 7 (1) Section 6 (penalties and legal proceedings) shall be amended as follows.
- (2) In subsection (1)(a), for “three” substitute “ six ”.
- (3) In subsection (5), for “on behalf of”, in both places where those words occur, substitute “ with the consent of the Secretary of State or ”.
- 8 After section 7 insert the following section—

**“7A Powers of enforcement in relation to marine offences under this Act.**

- (1) The following persons are enforcement officers for the purposes of this section—
- (a) persons authorised by the Secretary of State to exercise the powers conferred by subsection (5) below;
  - (b) police officers;
  - (c) commissioned officers of Her Majesty’s armed forces;
  - (d) officers commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979; and
  - (e) persons not falling within any of the preceding paragraphs who are British sea-fishery officers by virtue of section 7(1) of the Sea Fisheries Act 1968;
- and in this subsection “armed forces” means the Royal Navy, the Royal Marines, the regular army and the regular air force, and any reserve or auxiliary force of any of those services which has been called out on permanent service, or called into actual service, or embodied.
- (2) If an enforcement officer has reasonable grounds for suspecting—
- (a) that an offence under this Act has been or is being committed by the making of a broadcast from any ship, structure or other object in external waters or in tidal waters in the United Kingdom or from a ship registered in the United Kingdom, the Isle of Man or any of the Channel Islands while on the high seas,
  - (b) that an offence under section 2 of this Act has been or is being committed by the making of a broadcast from a structure or other object in waters falling within subsection (3)(c) of that section, or
  - (c) that an offence under section 2A of this Act has been or is being committed by the making of a broadcast from a ship,

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and the Secretary of State has issued a written authorisation for the exercise of the powers conferred by subsection (5) below in relation to that ship, structure or other object, then (subject to subsections (6) and (7) below) the officer may, with or without persons assigned to assist him in his duties, so exercise those powers.

(3) If—

- (a) the Secretary of State has issued an authorisation under subsection (2) above for the exercise of the powers conferred by subsection (5) below in relation to any ship, structure or other object, and
- (b) an enforcement officer has reasonable grounds for suspecting that an offence under section 4 or 5 of this Act has been or is being committed in connection with the making of a broadcast from that ship, structure or other object,

then (subject to subsections (6) and (7) below) the officer may, with or without persons assigned to assist him in his duties, also exercise those powers in relation to any ship, structure or other object which he has reasonable grounds to suspect has been or is being used in connection with the commission of that offence.

(4) Where—

- (a) an enforcement officer has reasonable grounds for suspecting that an offence under section 4 or 5 of this Act has been or is being committed in connection with the making of a broadcast from a ship, structure or other object, but
- (b) an authorisation has not been issued under subsection (2) above for the exercise of the powers conferred by subsection (5) below in relation to that ship, structure or other object,

then (subject to subsections (6) and (7) below) the officer may, with or without persons assigned to assist him in his duties, nevertheless exercise those powers in relation to any ship, structure or other object which he has reasonable grounds to suspect has been or is being used in connection with the commission of that offence if the Secretary of State has issued a written authorisation for the exercise of those powers in relation to that ship, structure or other object.

(5) The powers conferred by this subsection on an enforcement officer in relation to any ship, structure or other object are—

- (a) to board and search the ship, structure or other object;
- (b) to seize and detain the ship, structure or other object and any apparatus or other thing found in the course of the search which appears to him to have been used, or to have been intended to be used, in connection with, or to be evidence of, the commission of the suspected offence;
- (c) to arrest and search any person who he has reasonable grounds to suspect has committed or is committing an offence under this Act if—
  - (i) that person is on board the ship, structure or other object, or
  - (ii) the officer has reasonable grounds for suspecting that that person was so on board at, or shortly before, the time when the officer boarded the ship, structure or other object;



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- (d) to arrest any person who assaults him, or a person assigned to assist him in his duties, while exercising any of the powers conferred by this subsection or who intentionally obstructs him or any such person in the exercise of any of those powers;
  - (e) to require any person on board the ship, structure or other object to produce any documents or other items which are in his custody or possession and are or may be evidence of the commission of any offence under this Act;
  - (f) to require any such person to do anything for the purpose of facilitating the exercise of any of the powers conferred by this subsection, including enabling any apparatus or other thing to be rendered safe and, in the case of a ship, enabling the ship to be taken to a port;
  - (g) to use reasonable force, if necessary, in exercising any of those powers;
- and references in paragraphs (a) to (c) and (e) above to the ship, structure or other object include references to any ship's boat or other vessel used from the ship, structure or other object.
- (6) Except as provided in subsection (7) below, the powers conferred by subsection (5) above shall only be exercised in tidal waters in the United Kingdom or in external waters.
- (7) Those powers may in addition—
- (a) in relation to a suspected offence under this Act committed in a ship registered in the United Kingdom, the Isle of Man or any of the Channel Islands while on the high seas, be exercised in relation to that ship on the high seas;
  - (b) in relation to a suspected offence under section 2 of this Act committed on a structure or other object within waters falling within subsection (3)(c) of that section, be exercised in relation to that structure or other object within those waters; and
  - (c) in relation to a suspected offence under section 2A of this Act committed in a ship within any such area of the high seas as is mentioned in subsection (1)(a) of that section, be exercised in relation to that ship within that area of the high seas.
- (8) Any person who—
- (a) assaults an enforcement officer, or a person assigned to assist him in his duties, while exercising any of the powers conferred by subsection (5) above or intentionally obstructs him or any such person in the exercise of any of those powers, or
  - (b) without reasonable excuse fails or refuses to comply with any such requirement as is mentioned in paragraph (e) or (f) of that subsection,
- shall be guilty of an offence under this Act.
- (9) Neither an enforcement officer nor a person assigned to assist him in his duties shall be liable in any civil or criminal proceedings for anything done in purported exercise of any of the powers conferred by subsection (5) above if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

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- (10) Nothing in this section shall have effect so as to prejudice the exercise of any powers exercisable apart from this section.
- (11) Any reference in this section, in relation to a person assigned to assist an enforcement officer in his duties, to the exercise of any of the powers conferred by subsection (5) above is a reference to the exercise by that person of any of those powers on behalf of that officer.”

## SCHEDULE 17

Section 176.

### INFORMATION ABOUT PROGRAMMES: COPYRIGHT

#### PART I

##### COPYRIGHT LICENSING

- 1 (1) This paragraph applies where the person providing a programme service has assigned to another the copyright in works containing information to which this Schedule applies.
- (2) The person providing the programme service, not the assignee, is to be treated as the owner of the copyright for the purposes of licensing any act restricted by the copyright done on or after the day on which this paragraph comes into force.
- (3) Where the assignment by the person providing the programme service occurred before 29th September 1989 then, in relation to any act restricted by the copyright so assigned—
- (a) sub-paragraph (2) does not have effect, and
  - (b) references below in this Schedule to the person providing the programme service are to the assignee.

#### PART II

##### USE OF INFORMATION AS OF RIGHT

###### *Circumstances in which right available*

- 2 (1) Paragraph 4 applies to any act restricted by the copyright in works containing information to which this Schedule applies done by the publisher if—
- (a) a licence to do the act could be granted by the person providing the programme service but no such licence is held by the publisher,
  - (b) the person providing the programme service refuses to grant to the publisher a licence to do the act, being a licence of such duration, and of which the terms as to payment for doing the act are such, as would be acceptable to the publisher, and
  - (c) the publisher has complied with paragraph 3.
- (2) The reference in sub-paragraph (1) to refusing to grant a licence includes failing to do so within a reasonable time of being asked.

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- (3) References below in this Schedule to the terms of payment are to the terms as to payment for doing any act restricted by the copyright in works containing information to which this Schedule applies.

*Notice of intention to exercise right*

- 3 (1) A publisher intending to avail himself of the right conferred by paragraph 4 must—
- (a) give notice of his intention to the person providing the programme service, asking that person to propose terms of payment, and
  - (b) after receiving the proposal or the expiry of a reasonable time, give reasonable notice to the person providing the programme service of the date on which he proposes to begin exercising the right and the terms of payment in accordance with which he intends to do so.
- (2) Before exercising the right the publisher must—
- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right and of the date on which he proposes to begin to do so, and
  - (b) apply to the Tribunal under paragraph 5 to settle the terms of payment.

*Conditions for exercise of right*

- 4 (1) Where the publisher, on or after the date specified in a notice under paragraph 3(1)(b), does any act in circumstances in which this paragraph applies, he shall, if he makes the payments required by this paragraph, be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence to do so granted by the person providing the programme service.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under paragraph 5 or, if no such order has been made—
- (a) in accordance with any proposal for terms of payment made by the person providing the programme service pursuant to a request under paragraph 3(1)(a), or
  - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made appears to the publisher to be unreasonably high, in accordance with the terms of payment notified under paragraph 3(1)(b).

*Applications to settle payments*

- 5 (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under sub-paragraph (1) has effect from the date the applicant begins to exercise the right conferred by paragraph 4 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

*Application for review of order*

- 6 (1) A person exercising the right conferred by paragraph 4, or the person providing the programme service, may apply to the Tribunal to review any order under paragraph 5.

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- (2) An application under sub-paragraph (1) shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, or
  - (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An order under this paragraph has effect from the date on which it is made or such later date as may be specified by the Tribunal.

### PART III

#### SUPPLEMENTARY

- 7 (1) This Schedule and the <sup>M100</sup>Copyright, Designs and Patents Act 1988 shall have effect as if the Schedule were included in Chapter III of Part I of that Act, and that Act shall have effect as if proceedings under this Schedule were listed in section 149 of that Act (jurisdiction of the Copyright Tribunal).
- (2) References in this Schedule to anything done by the publisher include anything done on his behalf.
- (3) References in this Schedule to works include future works, and references to the copyright in works include future copyright.

#### Marginal Citations

<sup>M100</sup> 1988 c. 48.

## SCHEDULE 18

Section 180.

### TRANSFER OF FUNCTIONS CONNECTED WITH TELEVISION LICENCES

#### PART I

#### <sup>M101</sup>AMENDMENTS OF WIRELESS TELEGRAPHY ACT 1949

#### Marginal Citations

<sup>M101</sup> 1949 c. 54.

- 1 (1) Section 1 (licensing of wireless telegraphy) shall be amended as follows.

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- (2) In subsection (1), for the words from “granted” to “any person” substitute “granted under this section—
- (a) by the Secretary of State (unless it is a television licence), or
  - (b) if it is a television licence, by the BBC;
- and any person ”.
- (3) In subsection (2), for the words from “limitations as” (where first occurring) to “including” substitute “limitations—
- (a) as the Secretary of State may think fit; or
  - (b) in the case of a television licence, as the Secretary of State may direct or (subject to any such direction) the BBC may think fit,
- including ”.
- (4) In subsection (3), before “, continue in force” insert “ or (if it is a television licence) by the BBC ”.
- (5) In subsection (4)—
- (a) after “wireless telegraphy licence” insert “ other than a television licence ”; and
  - (b) at the end add “; and a television licence may be revoked, or the terms, provisions or limitations thereof varied, by the BBC (either of their own motion or to give effect to any direction of the Secretary of State under subsection (2)(b) of this section)—
- (a) by a notice in writing served on the holder of the licence; or
  - (b) by a general notice published as mentioned above.”
- (6) At the end of the section add the following subsection—
- “(7) In this Act—
- “television licence” means a wireless telegraphy licence authorising the installation and use of a television receiver; and
  - “television receiver” means television receiving apparatus of any class or description specified in regulations made by the Secretary of State under section 2 of this Act.”
- 2 (1) Section 2 (fees and charges for wireless telegraphy licences) shall be amended as follows.
- (2) In subsection (1), for the words from “paid to” to “by the person” substitute “paid—
- (a) to the Secretary of State; or
  - (b) in the case of a television licence, to the BBC,
- by the person ”.
- (3) For the first paragraph of subsection (2) substitute—
- “Notwithstanding anything in subsection (1) of this section, where—
- (a) an application for the issue or renewal of a television licence is made to the BBC by a person ordinarily resident in the United Kingdom, and

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- (b) the BBC are satisfied, by means of a certificate issued by the local authority and produced to them by the applicant, that the applicant is a blind person not resident in a public or charitable institution or in a school,
- the BBC shall, to such extent as the Secretary of State may determine, dispense with the payment of any sum which would otherwise be payable on the issue or renewal of the licence.”
- 3 In section 15(1) (entry and search of premises etc.), for the words from “authorising” down to (but not including) “and named” substitute “authorising—
- (a) any person or persons authorised in that behalf by the Secretary of State; or
- (b) where the offence relates to the installation or use of a television receiver, any person or persons authorised in that behalf by the BBC or the Secretary of State.”.
- 4 In section 19 (interpretation), insert the following subsection after subsection (2)—
- “(2A) In this Act—
- “the BBC” means the British Broadcasting Corporation; and
- “television licence” and “television receiver” have the meaning given by section 1(7) of this Act.”

## PART II

### <sup>M102</sup>AMENDMENTS OF PART I OF WIRELESS TELEGRAPHY ACT 1967

#### Marginal Citations

<sup>M102</sup> 1967 c. 72.

- 1 In the following provisions, namely—
- <sup>F236</sup>(a) .....
- (b) subsections (1), (3) and (6) of section 2 (notification and recording of transactions),
- (c) subsection (1) of section 3 (power to call for additional information),
- (d) subsections (1) and (2) of section 4 (service of notices, etc.), and
- (e) subsections (3) to (5) of section 5 (offences and enforcement),
- for “the Postmaster General” wherever those words occur (which are, by virtue of section 3(1) of the <sup>M103</sup>Post Office Act 1969 and the <sup>M104</sup>Ministry of Posts and Telecommunications (Dissolution) Order 1974, to be construed as, or in certain instances as including, a reference to the Secretary of State) substitute “ the BBC ”.

#### Textual Amendments

<sup>F236</sup> Sch. 18 Pt. II para. 1(a) repealed (16.8.1996) by [S.I. 1996/1864](#), [art. 4\(6\)](#)

#### Marginal Citations

<sup>M103</sup> 1969 c. 48.

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M104 S.I. 1974/691.

F237<sup>2</sup> .....

**Textual Amendments**

F237 Sch. 18 Pt. II para. 2 repealed (16.8.1996) by S.I. 1996/1864, art. 4(6)

- 3 In section 2(3)—  
    (a) for “him” substitute “ them ”; and  
    (b) for “he” substitute “ they ”.
- 4 In section 3(1), for “him” (where first occurring) substitute “ them ”.
- 5 In section 4(2), for “him” (wherever occurring) substitute “ them ”.
- 6 In section 5—  
    (a) in subsection (3), for “his” substitute “ their ”; and  
    (b) in subsection (5), after “came to” insert “ their or ”.
- 7 In section 6(1)—  
    (a) insert the following definition after the definition of “appointed day”—  
        ““the BBC” means the British Broadcasting Corporation;”; and  
    (b) at the end of the definition of “prescribed” add “ after consultation with  
        the BBC ”.

SCHEDULE 19

Section 183.

THE GAELIC TELEVISION COMMITTEE: SUPPLEMENTARY PROVISIONS

*Status and capacity*

- 1 (1) The Committee shall be a body corporate.
- (2) The Committee shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the Committee as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under section 183 of this Act.

*Tenure of office and remuneration*

- 2 (1) Subject to sub-paragraph (2), each member of the Committee shall hold and vacate office in accordance with the terms of his appointment.
- (2) Any member of the Committee may at any time resign his office by notice to the Commission.
- (3) The Commission may pay to each member such remuneration and allowances as they may determine.

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### *Disqualification of members of Committee for House of Commons*

F238<sub>3</sub> .....

#### **Textual Amendments**

**F238** Sch. 19 para. 3 repealed (1.4.1997) by 1996 c. 55, s. 148(2), Sch. 11 Pt. I (with s. 43(1)(6)); S.I. 1997/1005, art. 4

### *Proceedings*

- 4 (1) Subject to paragraph 5, the quorum of the Committee and the arrangements relating to their meetings shall be such as the Committee may determine.
- (2) The arrangements may, with the approval of the Commission, provide for the discharge, under the general direction of the Committee, of any of the Committee's functions by a committee or by one or more of the members or employees of the Committee.
- 5 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Committee shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Committee, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Committee at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Committee by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Committee in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Committee include references to a meeting of any of their committees.
- 6 The validity of any proceedings of the Committee shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 5.

### *Employees of the Committee*

- 7 (1) The Committee may appoint such employees as they may determine with the consent of the Commission as to numbers and terms of employment.



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- (2) If the Committee determine to do so in the case of any of their employees, the Committee shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Committee may determine.
- (3) The <sup>M105</sup>Employers' Liability (Compulsory Insurance) Act 1969 shall not require insurance to be effected by the Committee.

#### Marginal Citations

M105 1969 c. 57.

#### Financial provision

- 8 There shall be defrayed out of the [<sup>F239</sup>Gaelic Broadcasting Fund]—
- (a) any expenses incurred by the Commission—
- (i) by virtue of paragraph 2,
- (ii) in paying the salaries of any employees of the Commission whose services have been furnished to the Committee by the Commission, or
- (iii) in connection with providing the Committee with office accommodation or other facilities;
- (b) any expenses incurred by the Committee by virtue of paragraph 7; and
- (c) with the approval of the Commission [<sup>F240</sup>and (where the expenses relate to the Commission's functions in connection with sound programmes) the Radio Authority], any other expenses incurred by the Committee.

#### Textual Amendments

**F239** Words in Sch. 19 para. 8 substituted (1.4.1997) by 1996 c. 55, s. 148(1), Sch. 10 Pt. II para. 26(a)(i); S.I. 1997/1005, art. 4

**F240** Sch. 19 para. 8(c) inserted (1.4.1997) by 1996 c. 55, s. 148(1), Sch. 10 Pt. II para. 26(a)(ii); S.I. 1997/1005, art. 4

#### Authentication of Committee's seal

- 9 The application of the seal of the Committee shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### Presumption of authenticity of documents issued by the Committee

- 10 Any document purporting to be an instrument issued by the Committee and to be duly executed under the seal of the Committee or to be signed on behalf of the Committee shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

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### *Accounts and audit*

- 11 (1) The Committee shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Commission may direct.
- (2) The accounts of the Committee shall be audited by auditors to be appointed by the Committee with the approval of the Commission.
- [<sup>F241</sup>(3) A person shall not be qualified to be appointed in pursuance of sub-paragraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Committee shall at all reasonable times upon demand made by the Commission [<sup>F242</sup>or the Radio Authority] or by any persons authorised by [<sup>F243</sup>the Commission or, as the case may be, the Authority] in that behalf—
- (a) afford to them full liberty to examine the accounts of the Committee; and
  - (b) furnish them with all forecasts, estimates, information and documents which they may require with respect to the financial transactions and commitments of the Committee.

#### **Textual Amendments**

**F241** Sch. 19 para. 11(3) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, **Sch. para. 77(7)**

**F242** Words in Sch. 19 para. 11(4) inserted (1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 26(b)(i)**; S.I. 1997/1005, **art. 4**

**F243** Words in Sch. 19 para. 11(4) substituted (1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 26(b)(ii)**; S.I. 1997/1005, **art. 4**

### *Annual reports*

- 12 (1) As soon as possible after the end of each financial year, the Committee shall prepare a general report of their proceedings during that year and transmit it to the Commission.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement.
- (3) The Commission shall send a copy of each annual report received by them in accordance with this paragraph to the Secretary of State who shall lay copies of it before each House of Parliament.

## SCHEDULE 20

Section 203(1).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Parliamentary Papers Act 1840 (c. 9)*

- 1 Section 3 (protection in respect of proceedings for printing extracts from or abstracts of parliamentary papers) shall have effect as if the reference to printing included a reference to including in a programme service.

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*Law of Libel Amendment Act 1888 (c. 64)*

- 2 Section 3 (contemporary reports of proceedings before courts exercising judicial authority) shall apply in relation to reports or matters included in a programme service, and in relation to any inclusion in such a service of any such report or matter, as it applies in relation to reports and matters published in a newspaper and to publication in a newspaper.

*Children and Young Persons Act 1933 (c. 12)*

- 3 (1) In section 28 (powers of entry)—
- (a) in subsection (2)(a), omit “a cable programme studio” and for “broadcast in a cable programme” substitute “programme service”; and
  - (b) for subsection (4) substitute—
- “(4) In this section—
- “broadcasting studio” means a studio used in connection with the provision of a programme service;
  - “programme service” has the same meaning as in the Broadcasting Act 1990.”
- (2) Sections 39<sup>F244</sup> . . . (restriction on newspaper reports of court proceedings involving children and young persons) shall, with the necessary modifications, apply in relation to reports or matters included in a programme service, and in relation to including any such reports or matters in such a service, as they apply in relation to reports or matters published in newspapers and to publishing any matter in a newspaper.

**Textual Amendments**

**F244** Words in [Sch. 20 para. 3\(2\)](#) repealed (3.2.1995) by [1994 c. 33, s. 168\(3\)](#), [Sch. 11](#); [S.I. 1995/127, art. 2\(1\)](#), [Sch. 1](#) Appendix C

*Children and Young Persons (Scotland) Act 1937 (c. 37)*

- 4 (1) In section 36 (power to enter studios)—
- (a) in subsection (2)(a), omit “a cable programme studio” and for “broadcast in a cable programme” substitute “programme service”; and
  - (b) for subsection (4) substitute—
- “(4) In this section—
- “broadcasting studio” means a studio used in connection with the provision of a programme service;
  - “programme service” has the same meaning as in the Broadcasting Act 1990”.
- (2) Section 46 (restriction on newspaper reports of court proceedings involving children and young persons) shall, with the necessary modifications, apply in relation to reports or matters included in a programme service, and in relation to including any

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such reports or matters in such a service, as it applies in relation to reports or matters published in newspapers and to publishing any matter in a newspaper.

*Public Bodies (Admission to Meetings) Act 1960 (c. 67)*

- 5 In section 1(7) (admission of public to meetings of local authorities and other bodies), for the words from “or for” to “licensed” substitute “ or for programme services (within the meaning of the Broadcasting Act 1990) other than sound or television broadcasting services ”.

*Children and Young Persons Act 1963 (c. 37)*

- 6 In section 37(2) (restriction on persons under 16 taking part in certain performances), for paragraph (d) substitute—  
“(d) any performance not falling within paragraph (c) above but included in a programme service (within the meaning of the Broadcasting Act 1990);”.

*Licensing Act 1964 (c. 26)*

- 7 In section 182(1) (relaxation, with respect to licensed premises, of law relating to music and dancing licences), for the words from “or by the” to “licensed” substitute “ or of programmes included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”.

*Private Places of Entertainment (Licensing) Act 1967 (c. 19)*

- 8 In section 2(3) (certain private places of entertainment to require licences), for the words from “or of being” onwards substitute “ or of being included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service. ”

*Wireless Telegraphy Act 1967 (c. 72)*

- 9 In section 6(1) (interpretation of Part I of the Act), for the definition of “television programme” substitute—  
““television programme” means a programme included in any television broadcasting or other television programme service (within the meaning of Part I of the Broadcasting Act 1990);”.

*London Cab Act 1968 (c. 7)*

- 10 In section 4(5) (restrictions on advertising in connection with private hire-cars), in the definition of “advertisement”, for “or by inclusion in a cable programme service” substitute “or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service”.

*Trade Descriptions Act 1968 (c. 29)*

- 11 In section 39(2) (interpretation), for “or in a programme included in a cable programme service” substitute “ or in any programme included in any programme

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service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”.

*Social Work (Scotland) Act 1968 (c. 49)*

- 12 In section 58(1) (prohibition of publication of proceedings in a children’s hearing), for the words “broadcast or a programme included in cable programme service”—
- (a) in the first place where they occur, substitute “ programme included in a programme service (within the meaning of the Broadcasting Act 1990) ”;
  - and
  - (b) in the second place where they occur, substitute “ programme included in such a programme service ”.

*Theatres Act 1968 (c. 54)*

- 13 In section 7(2)(b) (exceptions for performance given in certain circumstances), for sub-paragraph (iii) substitute—
- “(iii) the performance to be included in a programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service;”.

*Gaming Act 1968 (c. 65)*

F245 14 .....

**Textual Amendments**

F245 Sch. 20 para. 14 repealed (6.5.1992) by [Bingo Act 1992 \(c. 10\)](#), ss. 1(9), 2(2)

*Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))*

15 F246(1) .....

F246(2) .....

- (3) In section 59 (power to prohibit publication of certain matter in newspapers and broadcasts)—
- (a) in subsection (1)—
    - (i) in paragraph (a), for “in any newspaper or in any broadcast” substitute “which is published in any newspaper or included in any programme service (within the meaning of the Broadcasting Act 1990)”; and
    - (ii) in paragraph (b), for “in any television broadcast” substitute “included in any such service”; and
  - (b) in subsection (2), after “publishes” insert “or includes in a programme service”.
- (4) In section 68 (restrictions on newspaper and broadcast reports of proceedings in juvenile courts)—
- (a) in subsection (1)—

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- (i) in paragraph (a), for the words from “in any newspaper” to “court” substitute “of any proceedings in a juvenile court which is published in any newspaper or included in any programme service (within the meaning of the Broadcasting Act 1990)”; and
- (ii) in paragraph (b), for “in any television broadcast” substitute “included in any such service”; and
- (b) in subsection (3), after “publishes” insert “or includes in a programme service”.

#### Textual Amendments

**F246** Sch. 20 para. 15(1)(2) repealed (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(2), Sch. 10 (with Sch. 8 para. 23(4)); S.R. 1996/297, art. 2(2)

#### *Local Government Act 1972 (c. 70)*

- 16 In section 100K (interpretation and application of Part VA of the Act), in paragraph (b) of the definition of “newspaper”, for sub-paragraph (ii) substitute—  
“(ii) for inclusion in programmes to be included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service;”.

#### *Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))*

- 17 In section 148(1) (interpretation), in the definition of “newspaper”, for the words from “or for” onwards substitute “or for programmes to be included in a programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service;”.

#### *Employment Agencies Act 1973 (c. 35)*

- 18 In section 13(4) (interpretation), for paragraphs (c) and (d) substitute “or  
(c) to providing a programme service (within the meaning of the Broadcasting Act 1990).”

#### *Northern Ireland Constitution Act 1973 (c. 36)*

- 19 In Schedule 3 (minimum reserved matters), in paragraph 14, for the words from “, (including” onwards substitute “and the provision of programme services (within the meaning of the Broadcasting Act 1990).”

#### *Fair Trading Act 1973 (c. 41)*

- 20 In section 133(2)(a) (exceptions to restriction on disclosure of information), after “the Electricity Act 1989,” insert “or the Broadcasting Act 1990,”.

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*Criminal Procedure (Scotland) Act 1975 (c. 21)*

- 21 In subsection (2) of sections 169 and 374 (restrictions on report of proceedings involving person under 16), for the words from “broadcasts” to “service” substitute “ programmes included in a programme service (within the meaning of the Broadcasting Act 1990) ”.

*Industry Act 1975 (c. 68)*

- 22 <sup>F247</sup> .....

**Textual Amendments**

**F247** Sch. 20 para. 22 repealed (06.01.1992) by [British Technology Group Act 1991 \(c. 66, SIF 64\)](#), s. 17(2), [Sch. 2, Pt.I; S.I. 1991/2721, art.2](#).

*Scottish Development Agency Act 1975 (c. 69)*

- 23 In section 17 (the Scottish Development Agency and the media), for “Cable and Broadcasting Act 1984” substitute “ Broadcasting Act 1990 ”.

*Welsh Development Agency Act 1975 (c. 70)*

- 24 In section 19 (the Welsh Development Agency and the media)—
- (a) in subsection (1), for paragraphs (b) and (c) substitute—  
“(b) shall become the holder of a relevant licence.”;
  - (b) in subsection (3), for paragraphs (ii) and (iii) substitute—  
“(ii) activities connected with the provision of a service under a relevant licence.”;
  - (c) in subsection (9)—
    - (i) for “a programme contractor, they shall consult the Independent Broadcasting Authority” substitute “ the holder of a relevant licence, they shall consult the appropriate authority ”; and
    - (ii) for “that Authority” substitute “ the appropriate authority ”;
  - (d) omit subsection (9A);
  - (e) in subsection (10), for “programme contractor” substitute “ holder of a relevant licence ”; and
  - (f) for subsection (11) substitute—  
“(11) In this section—  
“appropriate authority” means—
    - (a) in relation to a licence granted under Part I of the Broadcasting Act 1990, the Independent Television Commission; and
    - (b) in relation to a licence granted under Part III of that Act, the Radio Authority;  
“relevant licence” means a licence granted by the Independent Television Commission or the Radio Authority under Part I or (as the case may be) Part III of that Act.”

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*Restrictive Trade Practices Act 1976 (c. 34)*

- 25 In section 41(1)(a) (exceptions to restriction on disclosure of information), after “the Electricity Act 1989” insert “ or the Broadcasting Act 1990 ”.

*Sexual Offences (Amendment) Act 1976 (c. 82)*

- 26 (1) In section 4 (anonymity of complainants in rape etc. cases)—
- (a) in subsection (1), for “broadcast or included in a cable programme”, in each place where those words occur, substitute “included in a relevant programme for reception” and for “broadcasting or inclusion in a cable programme” substitute “inclusion in a relevant programme”;
  - (b) in subsection (5), for “broadcast or included in a cable programme” substitute “or included in a relevant programme” and for paragraphs (c) and (d) substitute “and
    - (c) in the case of matter included in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;
  - (c) in subsection (5A), for “or broadcast of any matter or the inclusion of any matter in a cable programme,” substitute “of any matter or the inclusion of any matter in a relevant programme,” and for “ , broadcast or cable programme” substitute “or programme”;
  - (d) in subsection (6), omit the definitions of “a broadcast” and “cable programme” and after the definition of “complainant” insert—
 

““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990);” and
  - (e) in subsection (7), for “broadcast or inclusion in a cable programme” substitute “or upon matter included in a relevant programme”.
- (2) In section 5(5) (supplementary provisions), for “broadcast or cable programme in question was of” substitute “or programme in question was of, or (as the case may be) included,”.
- (3) In section 7(6) (extent to Northern Ireland), for “broadcast or inclusion in a cable programme” substitute “in, or such an inclusion of matter in a relevant programme for reception in,”.

*Sexual Offences (Northern Ireland) Order 1978 (S.I. 1978/460 (N.I.5))*

- 27 (1) In Article 6 (anonymity of complainants in rape offence cases)—
- <sup>F248</sup>(a) .....
  - (b) in paragraph (5), for “broadcast or included in a cable programme” substitute “or included in a relevant programme” and for sub-paragraphs (c) and (d) substitute “and
    - (c) in the case of matter included in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;



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- (c) in paragraph (6), omit the definitions of “a broadcast” and “cable programme” and after the definition of “complainant” insert—

““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990);” and

- (d) in paragraph (7), for “broadcasting or inclusion in a cable programme” substitute “or inclusion in a relevant programme” and for “broadcast or inclusion in a cable programme” substitute “or upon matter included in a relevant programme”.

- (2) In Article 7(3) (supplementary provisions), for “broadcast or cable programme in question was of” substitute “or programme in question was of, or (as the case may be) included,”.

F248(3) .....

**Textual Amendments**

**F248** Sch. 20 para. 27(1)(a)(3) repealed (9.1.1995) by S.I. 1994/2795 (NI 15), art. 26(3), Sch. 3; S.R. 1994/446, art. 2

*Competition Act 1980 (c. 21)*

- 28 In section 19(3) (exceptions to restriction on disclosure of information), after paragraph (m) insert—
  - “(n) the Broadcasting Act 1990.”

*Magistrates’ Courts Act 1980 (c. 43)*

- 29 (1) In section 8 (restrictions on reports of committal proceedings)—
  - (a) in subsection (1), for “broadcast or include in a cable programme” substitute “include in a relevant programme for reception”;
  - (b) in subsections (2B), (4), (5) and (8), for “broadcast or included in a cable programme”, in each place where those words occur, substitute “or included in a relevant programme”;
  - (c) in subsection (3), for “broadcast or include in a cable programme”, in each place where those words occur, substitute “or include in a relevant programme”;
  - (d) in subsection (5), for paragraphs (c) and (d) substitute—
    - “(c) in the case of the inclusion of a report in a relevant programme, any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;
  - (e) in subsection (10), omit the definitions of “broadcast” and “cable programme” and after the definition of “publish” insert—

““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990).”

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(2) In section 71 (reports of domestic proceedings), for subsection (1) substitute—

“(1) In the case of domestic proceedings in a magistrates’ court (other than proceedings under the Adoption Act 1976) it shall not be lawful for a person to whom this subsection applies—

- (a) to print or publish, or cause or procure to be printed or published, in a newspaper or periodical, or
- (b) to include, or cause or procure to be included, in a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Great Britain,

any particulars of the proceedings other than such particulars as are mentioned in subsection (1A) below.

(1A) The particulars referred to in subsection (1) above are—

- (a) the names, addresses and occupations of the parties and witnesses;
- (b) the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;
- (c) submissions on any point of law arising in the course of the proceedings and the decision of the court on the submissions;
- (d) the decision of the court, and any observations made by the court in giving it.

(1B) Subsection (1) above applies—

- (a) in relation to paragraph (a) of that subsection, to the proprietor, editor or publisher of the newspaper or periodical, and
- (b) in relation to paragraph (b) of that subsection, to any body corporate which provides the service in which the programme is included and to any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;

and in subsection (2), for “subsection (1)” substitute “ subsection (1A) ”.

*Indecent Displays (Control) Act 1981 (c. 42)*

30 In section 1(4) (provisions relating to indecent displays disappplied in relation to broadcasting etc.), for paragraph (a) substitute—

- “(a) included by any person in a television broadcasting service or other television programme service (within the meaning of Part I of the Broadcasting Act 1990);”.

*Contempt of Court Act 1981 (c. 49)*

31 (1) In section 2 (limitation of scope of strict liability)—

- (a) in subsection (1), for “broadcast cable programme” substitute “ programme included in a programme service ”; and
- (b) after subsection (4) insert—

“(5) In this section “programme service” has the same meaning as in the Broadcasting Act 1990.”

(2) In section 19 (interpretation), omit the definition of “cable programme”.

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*Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (S.I. 1981/839 (N.I.20))*

- 32 In Article 11(4) (interpretation), for sub-paragraphs (c) and (d) substitute “or  
(c) to providing a programme service (within the meaning of the Broadcasting Act 1990).”

*Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26))*

- 33 (1) In Article 44 (reports of preliminary proceedings)—  
(a) in paragraphs (1) and (2), for “or published”, in each place where those words occur, substitute “, published or included in a relevant programme ”; and  
(b) after paragraph (5) insert—

“(6) In this Article “relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Northern Ireland.”

- (2) In Article 90 (reports of domestic proceedings), for paragraph (1) substitute—

“(1) A person to whom this paragraph applies shall not—

- (a) print or publish, or cause or procure to be printed or published, in a newspaper or periodical, or  
(b) include, or cause or procure to be included, in a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Northern Ireland,

any particulars of any domestic proceedings other than such particulars as are mentioned in paragraph (1A) below.

(1A) The particulars referred to in paragraph (1) above are—

- (a) the names, addresses and occupations of the parties and witnesses;  
(b) the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;  
(c) submissions on any point of law arising in the course of the proceedings, and decisions of the court on the submissions; and  
(d) the decisions of the court, and any observations made by the court in giving its decision.

(1B) Paragraph (1) above applies—

- (a) in relation to sub-paragraph (a) of that paragraph, to the proprietor, editor or publisher of the newspaper or periodical, and  
(b) in relation to sub-paragraph (b) of that paragraph, to any body corporate which provides the service in which the programme is included and to any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”

*Insurance Companies Act 1982 (c. 50)*

- 34 In section 72(6) (meaning of “advertisement” for the purposes of insurance advertisements), for “or by inclusion in a cable programme service” substitute “ or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”.

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*Representation of the People Act 1983 (c. 2)*

- 35 (1) Part II shall be amended as follows.
- (2) In section 75(1)(i) (election expenses in relation to publications or broadcasts), for the words from “the Independent” onwards substitute “ or by Sianel Pedwar Cymru or in a programme included in any service licensed under Part I or III of the Broadcasting Act 1990; ”.
- (3) In section 92 (broadcasting from outside United Kingdom), for subsection (1) substitute—
- “(1) No person shall, with intent to influence persons to give or refrain from giving their votes at a parliamentary or local government election, include, or aid, abet, counsel or procure the inclusion of, any matter relating to the election in any programme service (within the meaning of the Broadcasting Act 1990) provided from a place outside the United Kingdom otherwise than in pursuance of arrangements made with—
- (a) the British Broadcasting Corporation;
  - (b) Sianel Pedwar Cymru; or
  - (c) the holder of any licence granted by the Independent Television Commission or the Radio Authority,
- for the reception and re-transmission of that matter by that body or the holder of that licence.”
- (4) In section 93 (broadcasting during elections)—
- (a) in subsection (1)(a), for “broadcast from a television or other wireless transmitting station in the United Kingdom” substitute—
    - “(a) broadcast by the British Broadcasting Corporation or Sianel Pedwar Cymru; or
    - (b) included in any service licensed under Part I or III of the Broadcasting Act 1990”;
- and
- (b) omit subsection (3).
- (5) Without prejudice to the generality of section 20(2) of the <sup>M106</sup>Interpretation Act 1978, any reference in this paragraph to a provision of the Representation of the <sup>M107</sup>People Act 1983 includes a reference to that provision as applied by any regulations made under paragraph 2 of Schedule 1 to the <sup>M108</sup>European Parliamentary Elections Act 1978.

**Marginal Citations**

**M106** 1978 c. 30.

**M107** 1983 c. 2.

**M108** 1978 c. 10.

*National Audit Act 1983 (c. 44)*

- 36 In Part II of Schedule 4 (nationalised industries and other public authorities liable to examination by Comptroller and Auditor General), for the entries relating to

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the Independent Broadcasting Authority and the Welsh Fourth Channel Authority substitute—

“Sianel Pedwar Cymru.”

*Value Added Tax Act 1983 (c. 55)*

F249 37

**Textual Amendments**

**F249** Sch. 20 para. 37 repealed (1.9.1994) by 1994 c. 23, ss. 100(2), 101(1), Sch. 15

*Telecommunications Act 1984 (c. 12)*

- 38 (1) In section 6 (exceptions to prohibition on the running of unlicensed telecommunication systems)—
- (a) omit subsection (1) (exception for the running of a telecommunication system by a broadcasting authority);
  - (b) in subsection (2), for “such a system as is mentioned in subsection (1) above” substitute “ a telecommunication system to which subsection (2A) below applies ”; and
  - (c) after subsection (2) insert the following subsection—
    - “(2A) This subsection applies to a telecommunication system in the case of which every conveyance made by it is either—
      - (a) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in paragraph (c) of section 4(1) above; or
      - (b) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted.”
- (2) In section 7 (power to license telecommunication systems)—
- (a) in subsection (10A), for “Cable Authority” substitute “ Independent Television Commission ”; and
  - (b) in subsection (10B), for “licensable cable programme service” substitute “ local delivery service (within the meaning of Part II of the Broadcasting Act 1990) ”.
- (3) In section 42(2) (fraudulent use of telecommunication system), for “to which section 53 of the Cable and Broadcasting Act 1984 applies” substitute “ such as is mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988) ”.
- (4) In section 43(2) (improper use of public telecommunication system), for “cable programme service” substitute “ programme service (within the meaning of the Broadcasting Act 1990) ”.
- (5) In section 49 (investigation of complaints by the Director General of Telecommunications) omit subsection (2).

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*Video Recordings Act 1984 (c. 39)*

- 39 In section 3(8) (exempted supplies), for paragraphs (a) and (b) substitute “ a programme service (within the meaning of the Broadcasting Act 1990) ”.

*Cinemas Act 1985 (c. 13)*

- 40 In section 21(1) (interpretation), in the definition of “film exhibition”, for paragraphs (a) and (b) substitute “ programmes included in a programme service (within the meaning of the Broadcasting Act 1990); ”.

*Bankruptcy (Scotland) Act 1985 (c. 66)*

- 41 In subsection (5) of section 70 (supplies by utilities), for the words from “services”, where it second occurs, onwards substitute “ local delivery services within the meaning of Part II of the Broadcasting Act 1990 ”.

*Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I.11))*

- 42 In Article 130(8) (definition of “advertisement” for the purposes of restrictions on advertisements relating to gaming), after “television,” insert “ or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service, ”.

*Insolvency Act 1986 (c. 45)*

- 43 In sections 233(5)(d) and 372(5)(c) (supplies of gas, water, electricity and telecommunication services), for the words “services consisting” onwards, in each place where they occur, substitute “ local delivery services within the meaning of Part II of the Broadcasting Act 1990. ”

*Building Societies Act 1986 (c. 53)*

- 44 In section 50(10) (powers to control advertising), in the definition of “advertisement”, for the words from “whether” to “and references” substitute “whether—
- (a) documentary,
  - (b) by way of sound broadcasting or television or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service, or
  - (c) by any pictorial means not falling within paragraph (a) or (b) above;
- and references ”.

*Financial Services Act 1986 (c. 60)*

- 45 (1) In section 207 (interpretation)—
- (a) in subsection (2), after “television” insert “ or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”; and
  - (b) omit subsection (4).

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- (2) In paragraph 25A in Part III of Schedule 1 (advice given in sound, television or cable programmes excluded from activities constituting investment business)—
- (a) in sub-paragraph (1), for the words from “or teletext” onwards substitute “included, or made for inclusion, in a programme service.”; and
  - (b) for sub-paragraph (2) substitute—  
“(2) In this paragraph—
    - (a) “programme”, in relation to a programme service, includes an advertisement and any other item included in that service; and
    - (b) “programme service” has the same meaning as in the Broadcasting Act 1990.”

*Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I.3))*

- 46 In Article 2(2) (interpretation), in the definition of “newspaper”, for the words from “cable programme” onwards substitute “programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service;”.

*Criminal Justice Act 1987 (c. 38)*

F250 47 .....

**Textual Amendments**

**F250** Sch. 20 para. 47 repealed (4.7.1996 with effect in accordance with ss. 44, 72, Sch. 3 of the amending Act) by 1996 c. 25, s. 80, Sch. 5 para. 12 (with s. 78(1))

*Consumer Protection Act 1987 (c. 43)*

- 48 In section 24 (defences to offence of giving misleading price indication)—
- (a) in subsection (2), for the words from “, film” to “service,” substitute “or film or in a programme included in a programme service (within the meaning of the Broadcasting Act 1990),”; and
  - (b) in subsection (6), omit the definition of “cable programme service”.

*Consumer Protection (Northern Ireland) Order 1987 (S.I.1987/2049 (N.I.20))*

- 49 In Article 17 (defences to offence of giving misleading price indication)—
- (a) in paragraph (2), for “film or radio or television broadcast or in a programme included in a cable programme service,” substitute “or film or in a programme included in a programme service (within the meaning of the Broadcasting Act 1990),”; and
  - (b) in paragraph (6), omit the definition of “cable programme service”.

*Copyright, Designs and Patents Act 1988 (c. 48)*

F251 50 .....

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### Textual Amendments

**F251** Sch. 20 para. 50 repealed (1.10.1996) by 1996 c. 55, s. 148, **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

#### *Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915)*

- 51 (1) In regulation 2(1) (interpretation)—
- (a) omit the definitions of “broadcast advertisement”, “Cable Authority”, “IBA” and “licensable service”;
  - (b) before the definition of “court” insert—
 

““the Commission” means the Independent Television Commission”;
  - (c) for the definition of “licensed service” insert—
 

““licensed service” means—

    - (a) in relation to a complaint made to the Commission, a service in respect of which the Commission have granted a licence under Part I or II of the Broadcasting Act 1990; and
    - (b) in relation to a complaint made to the Radio Authority, a service in respect of which the Radio Authority have granted a licence under Part III of that Act;

and “licensed local delivery service” means a service in respect of which the Commission have granted a licence under Part II of that Act; ”; and
  - (d) after the definition of “publication” insert—
 

““relevant body” means the Commission or the Radio Authority;

“on S4C” has the same meaning as in Part I of the Broadcasting Act 1990;

“the Welsh Authority” has the same meaning as in that Act;”.
- (2) In regulation 4(2) (exceptions to complaints to be considered by Director General of Fair Trading), for “the IBA or the Cable Authority” substitute “ the Commission, the Radio Authority or the Welsh Authority ”.
- (3) For regulations 8 to 11 substitute—

#### **“COMPLAINTS TO THE COMMISSION AND THE RADIO AUTHORITY**

- 8 (1) Subject to paragraph (2) below, it shall be the duty of a relevant body to consider any complaint made to it that any advertisement included or proposed to be included in a licensed service is misleading, unless the complaint appears to the body to be frivolous or vexatious.
- (2) The Commission shall not consider any complaint about an advertisement included or proposed to be included in a licensed local delivery service by the



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reception and immediate re-transmission of broadcasts made by the British Broadcasting Corporation.

- (3) A relevant body shall give reasons for its decisions.
- (4) In exercising the powers conferred on it by these Regulations a relevant body shall have regard to all the interests involved and in particular the public interest.

#### **CONTROL BY THE COMMISSION AND THE RADIO AUTHORITY OF MISLEADING ADVERTISEMENTS**

- 9 (1) If, having considered a complaint about an advertisement pursuant to regulation 8(1) above, it considers that the advertisement is misleading, a relevant body may, if it thinks it appropriate to do so, exercise in relation to the advertisement the power conferred on it—
  - (a) where the relevant body is the Commission, by section 9(6) of the Broadcasting Act 1990 (power of Commission to give directions about advertisements), or
  - (b) where the relevant body is the Radio Authority, by section 93(6) of that Act (power of Radio Authority to give directions about advertisements).
- (2) A relevant body may require any person appearing to it to be responsible for an advertisement which the body believes may be misleading to furnish it with evidence as to the accuracy of any factual claim made in the advertisement. In deciding whether or not to make such a requirement the body shall have regard to the legitimate interests of any person who would be the subject of or affected by the requirement.
- (3) If such evidence is not furnished to it following a requirement made by it under paragraph (2) above or if it considers such evidence inadequate, a relevant body may consider the factual claim inaccurate.

#### **COMPLAINTS TO THE WELSH AUTHORITY**

- 10 (1) Subject to paragraph (2) below, it shall be the duty of the Welsh Authority to consider any complaint made to them that any advertisement broadcast or proposed to be broadcast on S4C is misleading, unless the complaint appears to the Authority to be frivolous or vexatious.
- (2) The Welsh Authority shall not consider any complaint about an advertisement broadcast or proposed to be broadcast on S4C by the reception and immediate re-transmission of broadcasts made by the British Broadcasting Corporation.
- (3) The Welsh Authority shall give reasons for their decisions.
- (4) In exercising the powers conferred on them by these Regulations the Welsh Authority shall have regard to all the interests involved and in particular the public interest.

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### CONTROL BY THE WELSH AUTHORITY OF MISLEADING ADVERTISEMENTS

- 11 (1) If, having considered a complaint about an advertisement pursuant to regulation 10(1) above, they consider that the advertisement is misleading, the Welsh Authority may, if they think it appropriate to do so, refuse to broadcast the advertisement.
- (2) The Welsh Authority may require any person appearing to them to be responsible for an advertisement which the Authority believe may be misleading to furnish them with evidence as to the accuracy of any factual claim made in the advertisement. In deciding whether or not to make such a requirement the Authority shall have regard to the legitimate interests of any person who would be the subject of or affected by the requirement.
- (3) If such evidence is not furnished to them following a requirement made by them under paragraph (2) above or if they consider such evidence inadequate, the Welsh Authority may consider the factual claim inaccurate.”

### *Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (S.I.1988/1846 (N.I.16))*

- 52 In Article 10 (restrictions on reporting applications for dismissal and preparatory hearings)—
- (a) in paragraph (1), for “broadcast or include in a cable programme” substitute “include in a relevant programme for reception”;
- (b) in paragraphs (5), (9) and (13), for “, broadcast or included in a cable programme” substitute “or included in a relevant programme”;
- (c) in paragraphs (6) and (8), for “, broadcast or include in a cable programme” substitute “or include in a relevant programme”;
- (d) in paragraph (12), for “broadcast or included in a cable programme” substitute “included in a relevant programme” and for “, broadcast or inclusion in a cable programme” substitute “or inclusion in a relevant programme”;
- (e) in paragraph (13), for sub-paragraphs (c) and (d) substitute—
- “(c) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;” and
- (f) in paragraph (16), omit the definitions of “broadcast” and “cable programme” and after the definition of “publish” insert—
- ““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990).”

### *Children Act 1989 (c. 41)*

- 53 In section 97(5) (privacy for children involved in certain proceedings), for paragraph (a) of the definition of “publish” substitute—

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“(a) include in a programme service (within the meaning of the Broadcasting Act 1990);”.

*Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19))*

54 In Articles 197(3) and 343(4) (supplies of water, electricity and telecommunication services), for the words from “services consisting” onwards, in each place where they occur, substitute “local delivery services within the meaning of Part II of the Broadcasting Act 1990.”

SCHEDULE 21

Section 203(3).

REPEALS

Chapter	Short title	Extent of repeal
1933 c. 12.	Children and Young Persons Act 1933.	In section 28(2)(a), the words “a cable programme studio”.
1937 c. 37.	Children and Young Persons (Scotland) Act 1937.	In section 36(2)(a), the words “a cable programme studio”.
1949 c. 54.	Wireless Telegraphy Act 1949.	Section 14(1B)(a).  In section 15, in subsection (1) the words “and named in the warrant”, and in subsection (2) the words “and named in the authorisation”.
1952 c. 66.	Defamation Act 1952.	Section 1.
1955 c. 7.	Wireless Telegraphy (Blind Persons) Act 1955.	The whole Act.
1955 c. 11 (N.I.).	Defamation Act (Northern Ireland) 1955.	Section 1.
1959 c. 66.	Obscene Publications Act 1959.	In section 1, the proviso to subsection (3).
1967 c. 72.	Wireless Telegraphy Act 1967.	Section 3(2).  Section 5(2).
1968 c. 34 (N.I.).	Children and Young Persons Act (Northern Ireland) 1968.	In section 45(2)(a), the words “a cable programme studio”.
1973 c. 41.	Fair Trading Act 1973.	In Schedule 7, in Part I, paragraphs 8 and 9.
1975 c. 24.	House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Cable Authority, the Independent Broad-casting Authority and

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		the Welsh Fourth Channel Authority.
1975 c. 25.	Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Cable Authority and the Independent Broad-casting Authority.
1975 c. 68.	Industry Act 1975.	Section 9(9A).
1975 c. 70.	Welsh Development Agency Act 1975.	Section 19(9A).
1976 c. 82.	Sexual Offences (Amendment) Act 1976.	In section 4(6), the definitions of “a broadcast” and “cable programme”.
S.I. 1978/460 (N.I.5).	Sexual Offences (Northern Ireland) Order 1978.	In Article 6(6), the definitions of “a broadcast” and “cable programme”.
1980 c. 43.	Magistrates Courts Act 1980.	In section 8(10), the definitions of “broadcast” and “cable programme”.
1980 c. 65.	Local Government, Planning and Land Act 1980.	In Schedule 16, paragraph 16.
1981 c. 49.	Contempt of Court Act 1981.	In section 19, the definition of “cable programme”.
1981 c. 68.	Broadcasting Act 1981.	The whole Act.
1982 c. 39.	Finance Act 1982.	Section 144(3).
1982 c. 45.	Civic Government (Scotland) Act 1982.	In section 51, subsection (6) (a) and, in subsection (8), in the definition of “material” the words from “and” onwards, and the word “showing,”.
1983 c. 2.	Representation of the People Act 1983.	Section 93(3).
1984 c. 12.	Telecommunications Act 1984.	Section 6(1).  Section 49(2).  In section 79(2), the words “or them”.
		In Schedule 4, paragraph 81.
		In Schedule 5, paragraphs 8(1) and (3) and 30.
1984 c. 46.	Cable and Broadcasting Act 1984.	The whole Act.

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1985 c. 9.	Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2, the entries relating to the Broadcasting Act 1981.
1986 c. 41.	Finance Act 1986.	Section 111. Schedule 22.
1986 c. 60.	Financial Services Act 1986.	Section 207(4).
1986 c. 64.	Public Order Act 1986.	In section 22, in subsection (2) the words “broad- casting or cable”, in subsections (4)(b) and (5)(b) the words “broad- cast or”, wherever occur- ring, and subsections (7) and (8). Section 23(4). In section 29, the definitions of “broadcast” and “cable programme service”. In Schedule 2, paragraphs 5 and 6.
1987 c. 10.	Broadcasting Act 1987.	The whole Act.
1987 c. 38.	Criminal Justice Act 1987.	In section 11(15), the definitions of “broadcast” and “cable programme”.
1987 c. 43.	Consumer Protection Act 1987.	In section 24(6), the definition of “cable programme service”.
S.I.1987/463 (N.I.7).	Public Order (Northern Ireland) Order 1987.	In Article 12, in paragraph (2)(a) the words “broad- casting or cable”, in paragraphs (4)(b) and (5) (b) the words “broadcast or”, wherever occurring, and paragraphs (7) and (8). Article 13(4). In Article 17, the defini- tions of “broadcast” and “cable programme service”.
S.I.1987/2049 (N.I.20).	Consumer Protection (Northern Ireland) Order 1987.	In Article 17(6), the definition of “cable programme service”.
1988 c. 40.	Education Reform Act 1988.	In Schedule 12, paragraph 49.
1988 c. 48.	Copyright, Designs and Patents Act 1988.	In section 73, subsection (2) (a) and the word “or” immediately following it, and subsection (3)(a) and

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		the word “or” immediately following it.
		Section 134(4).
		Section 299(2).
		In Schedule 2, paragraph 19(2)(a) and the word “or” immediately following it.
		In Schedule 7, paragraphs 29 and 30.
S.I.1988/915.	Control of Misleading Advertisements Regulations 1988.	In regulation 2(1), the definitions of “broadcast advertisement”, “Cable Authority”, “IBA” and “licensable service”.
S.I.1988/1846 (N.I.16).	Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988.	In Article 10(16), the definitions of “broadcast” and “cable programme”.
1989 c. 26.	Finance Act 1989.	Section 181. Schedule 16.

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## SCHEDULE 22

Section 203(4).

## TRANSITIONAL PROVISIONS AND SAVINGS

*Preservation of appointments of existing members of the Welsh Authority, the BCC and the BSC*

- 1 (1) Where, immediately before the date when the relevant section of this Act comes into force, any person holds office as chairman, deputy chairman or other member of the Welsh Authority, the BCC or the BSC, he shall continue to hold office as from that date as if he had been appointed under that section.
- (2) Except in so far as the Secretary of State may otherwise determine, any such person shall hold office as from that date in accordance with the terms of his original appointment.
- (3) In this paragraph “the relevant section of this Act” means—
- in relation to the Welsh Authority, section 56;
  - in relation to the BCC, section 142; and
  - in relation to the BSC, section 151.
- (4) In this paragraph and in paragraph 2 “the BCC” means the Broadcasting Complaints Commission and “the BSC” means the Broadcasting Standards Council.

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*Power to make provision with respect to complaints to the BCC or BSC*

- 2 (1) The Secretary of State may by order make such transitional provision as he considers appropriate in connection with—
- (a) the making, on or after the transfer date, of complaints to the BCC concerning programmes broadcast by the IBA before that date and the performance by the BCC, on or after that date, of functions in connection with complaints made to them about such programmes (whether so made before that date or by virtue of this paragraph), and
  - (b) the making, on or after the relevant date, of complaints to the BCC or the BSC concerning programmes broadcast in accordance with Schedule 11 and the performance by the BCC and the BSC respectively, on or after that date, of functions in connection with complaints made to them about such programmes (whether so made before that date or by virtue of this paragraph);
- and (subject to sub-paragraph (4)) references in this sub-paragraph to the performance of functions are, in relation to the BCC, references to the performance of functions under Part V of this Act and, in relation to the BSC, are references to the performance of functions under Part VI of this Act.
- (2) Without prejudice to the generality of sub-paragraph (1), an order under that sub-paragraph may provide that, in relation to complaints falling within that sub-paragraph, the BCC or (as the case may be) the BSC may give directions in pursuance of section 146 or (as the case may be) 156 of this Act to persons other than those referred to in section 146(1) or 156(1).
- (3) Without prejudice to the generality of section 200(2)(b) of this Act, an order under sub-paragraph (1) may make—
- (a) such transitional modifications of any provision of this Act, and
  - (b) such modifications of and savings in any other statutory provision,
- as the Secretary of State considers appropriate.
- (4) In this paragraph—
- (a) “the relevant date” means—
    - (i) in the case of a complaint concerning a television programme, the day after the end of the interim period within the meaning of Schedule 11, and
    - (ii) in the case of a complaint concerning a sound programme, the day after the end of the period during which the local sound broadcasting service in which it was broadcast was provided in accordance with Schedule 11,
  - (b) “the transfer date” means the day appointed under section 127(1) of this Act,
  - (c) “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment,
  - (d) “the IBA” means the Independent Broadcasting Authority, and
  - (e) references to programmes include references to teletext transmissions,
- and in connection with complaints to the BCC concerning programmes broadcast by the IBA before the transfer date, a reference to Part V of this Act or to any provision of that Part includes a reference to Part III of the <sup>M109</sup>Broadcasting Act 1981 or (as the case may be) to any corresponding provision of that Part of that Act.

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#### Marginal Citations

M109 1981 c. 68.

#### *Power to make provision with respect to complaints under the Control of Misleading Advertisements Regulations 1988*

- 3 (1) The Secretary of State may by order make such transitional provision as he considers appropriate in connection with—
- (a) the making, on or after the transfer date, of complaints to the relevant authority concerning advertisements included before that date in any programme or teletext transmission broadcast by the IBA or in any licensed service; and
  - (b) the performance by each of the relevant authorities, on or after that date, of functions under the <sup>M110</sup>Control of Misleading Advertisements Regulations 1988 in relation to complaints concerning such advertisements (whether made before that date or by virtue of paragraph (a)).
- (2) In sub-paragraph (1) “the relevant authority”—
- (a) in relation to an advertisement included in—
    - (i) a television programme, other than one broadcast on the Fourth Channel in Wales,
    - (ii) a teletext transmission, or
    - (iii) a licensed service,
 means the Independent Television Commission;
  - (b) in relation to an advertisement included in a television programme broadcast on the Fourth Channel in Wales, means the Welsh Authority; and
  - (c) in relation to an advertisement included in a sound programme, means the Radio Authority.
- (3) In this paragraph—
- (a) “the transfer date” means the day appointed under section 127(1) of this Act,
  - (b) “the Fourth Channel in Wales” has the same meaning as in Part II of the Broadcasting Act 1981, and
  - (c) “the IBA” means the Independent Broadcasting Authority;
- and expressions used in this paragraph which are also used in the Control of Misleading Advertisements Regulations 1988 (as they have effect without the amendments made by paragraph 51 of Schedule 20 to this Act) have the same meaning as in those Regulations.

#### Marginal Citations

M110 S.I. 1988/915.

#### *Saving of amendments made by Cable and Broadcasting Act 1984*

- 4 The amendments made by paragraphs 12, <sup>F252</sup> . . . , 32 and 45 of Schedule 5 to the <sup>M111</sup>Cable and Broadcasting Act 1984 shall not be affected by the repeals made



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by this Act but shall continue to have effect, subject to any amendments made by Schedule 20 to this Act.

**Textual Amendments**

**F252** Word in [Sch. 22 para. 4](#) repealed (4.11.1996) by [S.I. 1995/755 \(N.I. 15\)](#), [art. 185\(2\)](#), [Sch. 10](#) (with [Sch. 8 para. 23\(4\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)

**Marginal Citations**

**M111** [1984 c. 46](#).

*Transitional modification of amendments made by this Act*

- 5 (1) Any provision to which this sub-paragraph applies—
- (a) shall have effect in relation to the programme contractor or teletext contractor under a contract which continues in force by virtue of Part II of Schedule 11 to this Act, or in relation to any such contract, as it has effect in relation to the holder of a licence granted under Part I of this Act or in relation to any such licence;
  - (b) shall have effect in relation to the programme contractor under a contract which continues in force by virtue of Part IV of Schedule 11, or in relation to any such contract, as it has effect in relation to the holder of a licence granted under Part III of this Act or in relation to any such licence; and
  - (c) shall have effect in relation to any broadcasting service provided by the Independent Television Commission or the Radio Authority in accordance with Schedule 11 as it has effect in relation to any service provided under a licence granted under Part I or Part III of this Act.
- (2) Sub-paragraph (1) applies to the following provisions (as amended by this Act), namely—
- <sup>F253</sup>(a) .....
  - (b) section 19 of the <sup>M112</sup>Welsh Development Agency Act 1975;
  - (c) sections 75(1) and 93(1) of the Representation of the <sup>M113</sup>People Act 1983; and
  - (d) regulation 8(1) of the <sup>M114</sup>Control of Misleading Advertisements Regulations 1988.
- (3) Where regulation 8(1) of the Control of Misleading Advertisements Regulations 1988 has effect in relation to any complaint in accordance with sub-paragraphs (1) and (2) above, regulation 9(1) of those Regulations shall have effect in relation to the complaint as if for the words from “exercise” onwards there were substituted “refuse to broadcast the advertisement”.

**Textual Amendments**

**F253** [Sch. 22 para. 5\(2\)\(a\)](#) repealed (6.1.1992) by [British Technology Group Act 1991 \(c. 66, SIF 64\)](#), [s. 17\(2\)](#), [Sch. 2 Pt.I](#); [S.I. 1991/2721](#), [art.2](#)

**Marginal Citations**

**M112** [1975 c. 70](#).

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**M113** 1983 c. 2.

**M114** S.I. 1988/915.

- 6 Section 92(1) of the Representation of the People Act 1983 (as amended by this Act), shall have effect as if—
- (a) the reference to the holder of a licence granted by the Independent Television Commission or the Radio Authority included a reference to the holder of a relevant licence within the meaning of Part III of Schedule 12 to this Act; and
  - (b) there were added at the end “or in pursuance of arrangements made with—
    - (i) the Independent Television Commission or the Radio Authority, or
    - (ii) any programme contractor whose contract continues in force by virtue of Part II or IV of Schedule 11 to the Broadcasting Act 1990,

for the matter to be received by that body or contractor and re-transmitted by that body in the provision of any broadcasting service in accordance with the said Schedule 11. ”
- 7 Regulation 8(1) and (2) of the Control of Misleading Advertisements Regulations 1988 (as amended by this Act) shall apply to any service provided under a relevant licence within the meaning of Part III of Schedule 12 to this Act as they apply to a service licensed under Part II of this Act.

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