



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

### CHAPTER II

#### SOUND BROADCASTING SERVICES

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

- C1** Pt. III: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 5](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

*National services*

**98 Applications for national licences.**

- (1) Where [<sup>F1</sup>OFCOM] 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;
  - (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,
    - [<sup>F2</sup>(ia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;]
    - (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

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- (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 [<sup>F1</sup>OFCOM] 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 <sup>F3</sup>...—
    - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), <sup>F4</sup>...
    - <sup>F4</sup>(ii) .....
  - [<sup>F5</sup>(aa) the applicant’s proposals (if any) for providing a simulcast radio service corresponding to the service;]
  - (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 [<sup>F1</sup>OFCOM] 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 [<sup>F1</sup>OFCOM] may reasonably require for the purpose of considering the application.
- [<sup>F6</sup>(3A) For the purposes of subsection (1)(d)(ii)—
- (a) different percentages may be specified for different accounting periods; and
  - (b) the percentages that may be specified for an accounting period include a nil percentage.]

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- (4) At any time after receiving such an application and before determining it [F1OFCOM] may require the applicant to furnish additional information under any of paragraphs (a), [F7(aa),] (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to [F1OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [F1OFCOM] 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) [F8 and (aa)]; and
  - (c) such other information connected with his application as [F1OFCOM] consider appropriate.
- (7) In this section
- [F9“national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996; and]
- “programme” does not include an advertisement.
- (8) In this Part “cash bid”, in relation to a licence, means an offer to pay to [F1OFCOM] 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).

#### Textual Amendments

- F1** Words in s. 98 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F2** S. 98(1)(b)(ia) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F3** Word in s. 98(3)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(3\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F4** S. 98(3)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(3\)\(b\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F5** S. 98(3)(aa) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F6** S. 98(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F7** Word in s. 98(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F8** Words in s. 98(6)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F9** Words in s. 98(7) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(4\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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## 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, [F10OFCOM] 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 F11 ...—
    - (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, F12 ...
    - F12(ii) .....
  - (b) that he would be able to maintain that service [F13and any proposed simulcast radio service corresponding to 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 [F10OFCOM] that the requirements of subsection (1)(a) and (b) above are satisfied.

### Textual Amendments

- F10** Words in s. 99 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F11** Word in s. 99(1)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(3\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F12** S. 99(1)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(3\)\(b\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F13** Words in s. 99(1)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) Subject to the following provisions of this section, [F14OFCOM] 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.
- [F15(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a “simulcast applicant”), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—
- (a) disregard the requirement imposed by subsection (1); and
  - (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.
- (2) Where—
- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
  - (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,

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- OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.
- (2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—
- (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
  - (b) they propose to exercise their power under subsection (3).
- (2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).
- (2C) In this Part references to a person’s cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.]
- (3) [F<sup>14</sup>OFCOM] 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 [F<sup>14</sup>OFCOM], 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 [F<sup>14</sup>OFCOM], 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 [F<sup>14</sup>OFCOM] 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.

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- (8) Where [F14OFCOM] 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 [F14OFCOM] 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, [F14OFCOM]’s reasons for the licence having been so awarded; and
  - (d) such other information as [F14OFCOM] 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 [F14OFCOM] 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 [F14OFCOM] 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.

#### Textual Amendments

- F14** Words in s. 100 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 40](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F15** S. 100(1A)-(2C) substituted for s. 100(2) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

#### [F16]100A Licence conditions relating to simulcast radio services

Where OFCOM award a national licence to a person whose application for that licence included proposals to provide a simulcast radio service, that licence must include a condition requiring the licence holder—

- (a) to provide, from a date specified in the licence, a simulcast radio service corresponding to the licensed service; and
- (b) to do all that he can to secure the broadcasting of that service.]

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### Textual Amendments

**F16** S. 100A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 257\(6\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

## 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 <sup>F17</sup>[OFCOM] that he does not intend to provide <sup>F18</sup>[the licensed national service or that he does not intend to provide a corresponding simulcast radio service that he is required to provide by a condition imposed under section 100A], or
  - (b) <sup>F17</sup>[OFCOM] for any other reason have reasonable grounds for believing that that person will not provide <sup>F19</sup>[the licensed national service or any such simulcast radio service] once the licence has come into force,
- then, subject to subsection (2)—
- (i) <sup>F17</sup>[OFCOM] 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 <sup>F17</sup>[OFCOM] have served on him a notice stating their grounds for believing that he will not provide <sup>F20</sup>[the licensed national service or the simulcast radio service] 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 <sup>F17</sup>[OFCOM] 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, <sup>F21</sup>[a specified financial penalty].
- <sup>F22</sup>(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).
- (3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
- (3C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.



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- (3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.]
- (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 [F17OFCOM] as a debt due to them from any person who controls that body.

#### Textual Amendments

- F17** Words in s. 101 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F18** Words in s. 101(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F19** Words in s. 101(1)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F20** Words in s. 101(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F21** Words in s. 101(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F22** S. 101(3A)-(3D) substituted for s. 101(4) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C2** 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](#)
- C3** S. 101(3B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- C4** S. 101(3C)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## 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 [F23OFCOM] (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.



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- (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.
- (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 [F23OFCOM] 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 [F23OFCOM] 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—

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- (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>F24</sup>Statistics Board].

#### Textual Amendments

- F23** Words in s. 102 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 42](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F24** Words in s. 102(10) substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 6\(3\)](#); [S.I. 2008/839](#), art. 2

### 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
- (b) that change takes place without having been previously approved for the purposes of this section by <sup>F25</sup>OFCOM],

then (subject to subsection (5)) <sup>F25</sup>OFCOM] 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 <sup>F26</sup>is or is likely to be involved, to a substantial extent, in the provision of the programmes included] 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 <sup>F27</sup>as it has effect for the purposes of that Schedule.]

- (3) <sup>F25</sup>OFCOM] 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) <sup>F25</sup>OFCOM] may refuse so to approve any such change if, in any circumstances not falling within subsection (3), they consider it appropriate to do so.

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- (5) [F25OFCOM] 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) [F25OFCOM] 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.

#### Textual Amendments

- F25** Words in s. 103 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F26** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F27** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C5** S. 103 applied (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 18 para. 44\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### [F28] 103A Renewal of national licences.

- (1) A national licence may (subject to the following provisions of this section) be renewed [F29under this section] on one occasion for a period of [F30twelve] 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 [F31the day falling three months before] the relevant date.
- (3) Where any such application is made F32...—
  - F33(a) .....
  - (b) F34 ..., [F35OFCOM] 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 [F35OFCOM], they shall (subject to subsection (5)) grant the application if, but only if—
  - (a) [F35OFCOM] 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),
  - [F36(b) the applicant gave notice to OFCOM, within the period of one month beginning with the commencement of section 42 of the Broadcasting Act 1996, of his intention to provide a simulcast radio service, and]
  - (c) a simulcast radio service provided by the applicant is being broadcast in digital form or [F35OFCOM] are satisfied that by the relevant date the applicant has

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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 [<sup>F35</sup>OFCOM] 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 [<sup>F35</sup>OFCOM] —
- (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 [<sup>F35</sup>OFCOM] 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.
- [<sup>F37</sup>(7) The amount determined under subsection (6)(b) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 98.
- (7A) For the purposes of subsection (6)(c)—
- (a) different percentages may be specified for different accounting periods; and
  - (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (8) Where [<sup>F35</sup>OFCOM] 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 <sup>F38</sup> ..., 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.
- (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 [<sup>F35</sup>OFCOM] 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;

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- (c) where [F35OFCOM] 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.

F39(10) . . . . .

[ In the case of a pre-transfer national licence (including one for a period extended under F40(10A) section 253 of the Communications Act 2003)—

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a national licence granted by OFCOM under this Part after the radio transfer date.]

(11) In this section—

F41  
...

“the relevant date”, in relation to a national licence, means the date which [F35OFCOM] 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.]

[F42(12) A determination for the purposes of subsection (11)—

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.]

#### Textual Amendments

- F28** S. 103A inserted (24.7.1996) by 1996 c. 55, ss. 92, 149(e) (with s. 43(1)(6))
- F29** Words in s. 103A(1) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), ss. 31(1), 47(2)(b)
- F30** Word in s. 103A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(3) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F31** Words in s. 103A(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(4) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F32** Words in s. 103A(3) 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)
- F33** S. 103A(3)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), Sch. 19(1) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F34** Words in s. 103A(3)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), Sch. 19(1) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F35** Words in s. 103A substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F36** S. 103A(4)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(6) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F37** S. 103A(7)(7A) substituted for s. 103A(7) (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(7) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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- F38** Words in s. 103A(8) 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)
- F39** S. 103A(10) 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)
- F40** S. 103A(10A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 44\(8\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F41** Words in s. 103A(11) 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)
- F42** S. 103A(12) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 44\(9\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C6** S. 103A(2) modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 50\(3\)–\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C7** S. 103A(12) restricted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 50\(1\),\(2\)\(b\),\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**[<sup>F43</sup>103B Further renewal of national licences**

- (1) A national licence may be renewed under this section on [<sup>F44</sup>three occasions] for a period of not more than 7 years [<sup>F45</sup>(on the [<sup>F46</sup>first occasion,] 5 years (on the second occasion)] [<sup>F47</sup>or 10 years (on the third occasion)] beginning with the date of renewal (“the renewal period”) (subject to the following provisions of this section).
- (2) Subsections (2) to (9), (11) and (12) of section 103A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 103A, subject to [<sup>F48</sup>subsections (3) and (3A)].
- (3) Those provisions apply in relation to the renewal of a licence under this section as if the following were omitted—
  - (a) subsection (4)(b),
  - (b) in subsection (4)(c), the words from “or OFCOM” to the end,
  - (c) subsection (6)(a),
  - (d) subsection (8)(a), and
  - (e) subsection (9)(c).

[ Section 103A(12) (as applied) does not prevent the determination of a date falling less <sup>F49</sup>(3A) than one year after the making of the determination where—

- (a) the renewal of the licence in question would be the third renewal under this section,
  - (b) OFCOM consider that the relevant date for the purposes of section 103A (as applied) is a date which is not more than 15 months after the day on which this subsection comes into force, and
  - (c) the determination is made as soon as practicable after that day.]
- (4) Where OFCOM renew a licence under this section they must include in the licence as renewed a condition requiring the licence holder to do all that the licence holder can to secure the broadcasting of a simulcast radio service in digital form throughout the renewal period.]

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#### Textual Amendments

- F43** S. 103B inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\), ss. 31\(2\), 47\(2\)\(b\)](#) (with s. 31(3))
- F44** Words in s. 103B(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\), arts. 1, 3\(a\)\(i\)](#)
- F45** Words in s. 103B(1) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\), arts. 1, 2\(b\)](#)
- F46** Words in s. 103B(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\), arts. 1, 3\(a\)\(ii\)](#)
- F47** Words in s. 103B(1) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\), arts. 1, 3\(a\)\(iii\)](#)
- F48** Words in s. 103B(2) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\), arts. 1, 3\(b\)](#)
- F49** S. 103B(3A) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\), arts. 1, 3\(c\)](#)

#### *Local and other services*

### 104 Applications for other licences.

- (1) Where [<sup>F50</sup>OFCOM] propose to grant a licence to provide a local service, they shall publish, in such manner as they consider appropriate, a notice—
- stating that they propose to grant such a licence;
  - specifying the area or locality in the United Kingdom for which the service is to be provided;
  - inviting applications for the licence and specifying the closing date for applications; and
  - stating the fee payable on any application made in pursuance of the notice.
- (2) Any application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
- the fee specified in the notice under paragraph (d) of that subsection;
  - the applicant's proposals for providing a service that would—
    - 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
    - broaden the range of programmes available by way of local services to persons living in that area or locality;
  - such information as [<sup>F50</sup>OFCOM] 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
    - as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - such other information as [<sup>F50</sup>OFCOM] may reasonably require for the purpose of considering the application.
- (3) At any time after receiving such an application and before determining it [<sup>F50</sup>OFCOM] may require the applicant to furnish additional information under subsection (2)(b), (c) or (d).



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- (4) [<sup>F50</sup>OFCOM] shall, at the request of any person and on the payment by him of such sum (if any) as [<sup>F50</sup>OFCOM] 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>F51</sup>(5) .....
- (6) [<sup>F52</sup>An application for a licence to provide a restricted service shall be made] in such manner as [<sup>F50</sup>OFCOM] may determine, and shall be accompanied by such fee (if any) as [<sup>F50</sup>OFCOM] may determine.
- (7) In this section and sections 105 and 106 “programme” does not include an advertisement.

#### Textual Amendments

- F50** Words in s. 104 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 45\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F51** 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](#)
- F52** Words in s. 104(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 45\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### [<sup>F53</sup>104A] **Renewal of local licences.**

- (1) A local licence may (subject to the following provisions of this section) be renewed [<sup>F54</sup>under this section] on one occasion for a period of [<sup>F55</sup>twelve] years beginning with the date of renewal.
- [ A local licence may be renewed under this section only if it is granted before the day <sup>F56</sup>(1A) on which section 104AA comes into force.]
- (2) No application for the renewal of a local licence under subsection (1) may be made before [<sup>F57</sup>OFCOM] first publish a notice pursuant to section 50(2) of the Broadcasting 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 [<sup>F58</sup>the day falling three months before] 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 [<sup>F59</sup>or a relevant small-scale radio multiplex service],
- but may not nominate together a local digital sound programme service and a local radio multiplex service [<sup>F60</sup>or a local digital sound programme service and a small-scale 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

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- programme service by that local radio multiplex service [<sup>F61</sup>or (as the case may be) that small-scale radio multiplex service].
- (5) Where an application for the renewal of a local licence has been duly made to [<sup>F57</sup>OFCOM], 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), <sup>F62</sup>...
  - (b) the nominated local digital sound programme service provided by the applicant is being broadcast by means of the nominated local radio multiplex service [<sup>F63</sup>or the nominated small-scale radio multiplex service].
  - [<sup>F64</sup>(c) they are satisfied that the period for which the nominated local digital sound programme service will be available for reception and the times at which it will be available will not be significantly different, week by week, from those for which and at which the licensed local service will be broadcast;]
- (6) Where the condition specified in subsection (5)(a) is satisfied, [<sup>F57</sup>OFCOM] 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 [<sup>F65</sup>or the nominated small-scale radio multiplex service] has been awarded, and
  - (c) it appears to [<sup>F57</sup>OFCOM] 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 [<sup>F65</sup>or the nominated small-scale radio multiplex service].
- (7) [<sup>F57</sup>OFCOM] 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, [<sup>F57</sup>OFCOM] may postpone consideration of the application for such period not exceeding twelve months as they think appropriate.
- (9) Where [<sup>F57</sup>OFCOM] 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 [<sup>F57</sup>OFCOM] under this subsection.
- (10) On the grant of any application under this section [<sup>F57</sup>OFCOM] shall—
- (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 [<sup>F66</sup>or the nominated small-scale radio multiplex service], determine a date by which that service must have begun to be so broadcast; and
  - (b) specify a fee payable to [<sup>F57</sup>OFCOM] in respect of the renewal.
- (11) Where [<sup>F57</sup>OFCOM] 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—

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- (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 [<sup>F57</sup>OFCOM] 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 [<sup>F67</sup>or the nominated small-scale 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.

[ In the case of a pre-transfer local licence (including one for a period extended under <sup>F68</sup>(12A) section 253 of the Communications Act 2003)—

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a local licence granted by OFCOM under this Part after the radio transfer date.]

(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 [<sup>F57</sup>OFCOM] 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; <sup>F69</sup> ...
- (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 [<sup>F70</sup>the coverage area for a local service or local radio multiplex service is the area determined by OFCOM to be the area in the United Kingdom within which the service is capable of being received at a level satisfying such technical standards as may have been laid down by them for the purposes of this paragraph; and]

[ <sup>F71</sup>(e) “relevant small-scale radio multiplex service”, in relation to a local licence, means a small-scale radio multiplex service (within the meaning of section 258A of the Communications Act 2003) 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 the coverage area for a local service or small-scale radio multiplex service is the area determined by OFCOM to be the area in the United Kingdom within which the service is capable of being received at a level satisfying such technical standards as may have been laid down by them for the purposes of this paragraph.]

[ A determination for the purposes of subsection (13)(c)—

- <sup>F72</sup>(14) (a) must be made at least one year before the date determined; and

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(b) must be notified by OFCOM to the person who holds the licence in question.]]

#### Textual Amendments

- F53** 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**
- F54** Words in s. 104A(1) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), ss. **32(1)(a)**, 47(2)(b)
- F55** Word in s. 104A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F56** S. 104A(1A) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), ss. **32(1)(b)**, 47(2)(b)
- F57** Words in s. 104A substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F58** Words in s. 104A(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F59** Words in s. 104A(4)(b) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(a)(i)**
- F60** Words in s. 104A(4) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(a)(ii)**
- F61** Words in s. 104A(4) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(a)(iii)**
- F62** Word in s. 104A(5)(a) 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)
- F63** Words in s. 104A(5)(b) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(b)**
- F64** S. 104A(5)(c) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. **254**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F65** Words in s. 104A(6) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(c)**
- F66** Words in s. 104A(10)(a) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(d)**
- F67** Words in s. 104A(12) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(e)**
- F68** S. 104A(12A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(5)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F69** Word in s. 104A(13)(c) omitted (10.12.2020) by virtue of The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(f)(i)**
- F70** Words in s. 104A(13)(d) substituted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(f)(ii)**
- F71** S. 104A(13)(e) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(f)(iii)**
- F72** S. 104A(14) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C8** S. 104A(3) modified (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 18 para. 50(3)-(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C9** S. 104A(14) restricted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2) **Sch. 18 para. 50(1), (2)(c), (6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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## **[<sup>F73</sup>104A Further renewal of local licences**

- (1) A local licence may be renewed under this section on [<sup>F74</sup>three occasions] for a period of not more than 7 years [<sup>F75</sup>(on the [<sup>F76</sup>first occasion),] 5 years (on the second occasion)] [<sup>F77</sup>or 10 years (on the third occasion)] beginning with the date of renewal (subject to the following provisions of this section and section 104AB).
- (2) A local licence may be renewed under this section only if—
  - (a) it has been renewed under section 104A, or
  - (b) it is granted on or after the day on which this section comes into force <sup>F78</sup>....
- (3) Subsections (3) to (12), (13) and (14) of section 104A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 104A, subject to subsections (4) [<sup>F79</sup>, (4A)] and (5).
- (4) Section 104A(3) (as applied) has effect as if the words “Subject to subsection (2)” were omitted.

[ Section 104A(14) (as applied) does not prevent the determination of a date falling less <sup>F80</sup>(4A) than one year after the making of the determination where—

- (a) the renewal of the licence in question would be the third renewal under this section,
- (b) OFCOM consider that the relevant date for the purposes of section 104A (as applied) is a date which is not more than 15 months after the day on which this subsection comes into force, and
- (c) the determination is made as soon as practicable after that day.]
- (5) In the case of an approved licence, if an applicant for renewal of the licence under this section makes a national nomination in accordance with section 104AB, section 104A (as applied) has effect as if—
  - (a) subsections (4) and (13)(b) were omitted,
  - (b) references to the nominated local digital sound programme service were references to the national digital sound programme service nominated under section 104AB, <sup>F81</sup>...
  - (c) references to the nominated local radio multiplex service were references to the national radio multiplex service nominated under section 104AB [<sup>F82</sup>, and
  - (d) references to the nominated small-scale radio multiplex service were omitted.]
- (6) In this section and sections 104AB and 104AC—
 

“approved licence” means a local licence approved by OFCOM for the purposes of this section;

“local digital sound programme service”, “local radio multiplex service”, “national digital sound programme service” and “national radio multiplex service” have the same meanings as in Part 2 of the Broadcasting Act 1996.

[<sup>F83</sup>“small-scale radio multiplex service” has the same meaning as in section 258A of the Communications Act 2003.]
- (7) Before approving a licence for the purposes of this section, OFCOM must publish a document specifying—
  - (a) the licence proposed to be approved, and
  - (b) a period in which representations may be made to OFCOM.

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#### Textual Amendments

- F73** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2)**, 47(2)(b) (with s. 32(3)(4))
- F74** Words in s. 104AA(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(a)(i)**
- F75** Words in s. 104AA(1) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **3(a)(ii)**
- F76** Words in s. 104AA(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(a)(ii)**
- F77** Words in s. 104AA(1) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(a)(iii)**
- F78** Words in s. 104AA(2) omitted (10.12.2020) by virtue of [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(b)**
- F79** Word in s. 104AA(3) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(c)**
- F80** S. 104AA(4A) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(d)**
- F81** Word in s. 104AA(5)(b) omitted (10.12.2020) by virtue of [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(e)(i)**
- F82** S. 104AA(5)(d) and word inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(e)(ii)**
- F83** Words in s. 104AA(6) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(f)**

#### 104AB Renewal under section 104AA: nomination of national services

- (1) For the purposes of section 104AA, a “national nomination” by an applicant for the renewal of an approved licence is the nomination of—
  - (a) a national digital sound programme service provided or to be provided by the applicant, and
  - (b) a national radio multiplex service.
- (2) A national nomination must be made in the application for the renewal of the approved licence or before OFCOM consider the application.
- (3) The applicant may not nominate a national digital sound programme service unless OFCOM are satisfied that, if the application in question were granted, the programmes included in that service in each calendar month would include at least 80% of the programmes included in the service provided under the approved licence.
- (4) A national nomination must specify the other approved licences (if any) in relation to which, in reliance on the nomination, an application may be made under section 104AC.

#### Textual Amendments

- F73** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2)**, 47(2)(b) (with s. 32(3)(4))

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## 104AC Variation of conditions relating to digital services

- (1) This section applies where—
- (a) a licence that is an approved licence has been renewed under section 104A and includes a local digital services condition,
  - (b) an application has been made under section 104AA for the renewal of another approved licence and the applicant has made a national nomination under section 104AB, and
  - (c) the nomination specifies the licence mentioned in paragraph (a) in accordance with section 104AB(4).
- (2) OFCOM may, if the requirements of subsections (3) and (4) are met, vary the licence mentioned in subsection (1)(a) by—
- (a) removing the local digital services condition, and
  - (b) adding a national digital services condition.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) OFCOM must be satisfied that, if they varied the licence, the programmes included in the nominated national digital sound programme service in each calendar month would include at least 80% of the programmes included in the service provided under that licence.
- (5) In this section—
- “local digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that a local digital sound programme service is broadcast by means of a local radio multiplex service;
- “national digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that the nominated national digital sound programme service is broadcast by means of the nominated national radio multiplex service until the day on which the licence (as renewed under section 104A) is to expire;
- “nominated” means nominated in the nomination referred to in subsection (1)(b).]

### Textual Amendments

**F73** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2), 47(2)(b)** (with [s. 32\(3\)\(4\)](#))

## 104B <sup>F84</sup> Special application procedure for local licences.

- (1) Where—
- (a) a local licence is due to expire (otherwise than by virtue of section 110), <sup>F85</sup>and]
  - <sup>F86</sup>(b) .....
  - (c) <sup>F87</sup>[OFCOM] propose to grant a further licence to provide the service in question,
- <sup>F87</sup>[OFCOM] may if they think fit publish a notice under subsection (2) instead of a notice under section 104(1).



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[<sup>F88</sup>(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date.]

- (2) A notice under this subsection is a notice—
- (a) stating that [<sup>F87</sup>OFCOM] 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 [<sup>F87</sup>OFCOM] 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 [<sup>F87</sup>OFCOM] 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 [<sup>F87</sup>OFCOM] 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).

<sup>F89</sup>(6) .....

<sup>F89</sup>(7) .....

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#### Textual Amendments

- F84** 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
- F85** Word in s. 104B(1)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 255(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F86** S. 104B(1)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 255(b), 411(2), Sch. 19(1) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F87** Words in s. 104B substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 47(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F88** S. 104B(1A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 47(3) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F89** S. 104B(6)(7) 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)

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

Where [<sup>F90</sup>OFCOM] 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
- [<sup>F91</sup>(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.]

#### Textual Amendments

- F90** Words in s. 105 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 48(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F91** S. 105(d) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 48(3) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### *Miscellaneous provisions relating to national and local services*

### [<sup>F92</sup>105A Variation of licence period following renewal

- (1) This section applies if the Secretary of State—

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- (a) has not nominated a date for digital switchover under section 97A for one or more relevant renewed services, or
  - (b) has withdrawn the nomination of such a date and has not nominated another such date under that section.
- (2) The Secretary of State may give notice to OFCOM fixing a date (the “termination date”) in relation to that service or such of those services as are specified or described in the notice.
- (3) The Secretary of State may fix different dates for different services but may not fix a date falling before 31 December 2015.
- (4) If the period for which a licence to provide a relevant renewed service is to continue in force ends after the termination date fixed for the service, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (5).
- (5) OFCOM may not reduce the period so that it ends on a day falling less than 2 years after the date on which they issue the notice, unless the licence holder consents to such a reduction.
- (6) If the period for which a licence to provide a relevant renewed service is to continue in force ends on or before the termination date fixed for the service, OFCOM may not vary the licence so that the period ends after that date.
- (7) “Relevant renewed service” means a national service provided under a licence that has been renewed under section 103B or a local service provided under a licence that has been renewed under section 104AA.]

#### Textual Amendments

**F92** S. 105A inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), ss. 33(2), 47(1) (with s. 33(4))

### 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 [<sup>F93</sup>OFCOM] 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<sup>F94</sup> ....
- [<sup>F95</sup>(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied—
  - (a) that the departure would not substantially alter the character of the service;
  - (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
  - (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality;<sup>F96</sup> ...
  - (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure [<sup>F97</sup>; or
  - (e) that, in the case of a local licence—

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- (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but
  - (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).]
- (1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in 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 [<sup>F93</sup>OFCOM], 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.
- (4) Subject to subsection (5), [<sup>F93</sup>OFCOM] 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.
- [<sup>F98</sup>(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them—
- (a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or
  - (b) that the increase that would result is justifiable in the exceptional circumstances of the case.]
- (6) As soon as practicable after [<sup>F99</sup>OFCOM] 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>F100</sup>(7) In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—
- (a) sound broadcasting services;
  - (b) radio licensable content services;
  - (c) additional services;
- but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question.]

#### Textual Amendments

**F93** Words in s. 106(1)-(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 49](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

*Status: Point in time view as at 10/12/2020.*

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- F94** Words in s. 106(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 312(2), 411(2), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F95** S. 106(1A)(1B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 312(3), 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F96** Word in s. 106(1A)(c) repealed (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), s. 47(1), [Sch. 2](#)
- F97** S. 106(1A)(e) and word inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 34(1), 47(1)
- F98** S. 106(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 312(4), 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F99** Words in s. 106(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 49](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F100** S. 106(7) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 312(5), 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

### [<sup>F101</sup>106ZA] **Consultation about change of character of local services**

- (1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying—
  - (a) the proposed departure; and
  - (b) the period in which representations may be made to OFCOM about the proposal.
- (2) That period must end not less than 28 days after the date of publication of the notice.
- (3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the departure.
- (4) OFCOM—
  - (a) are not required to publish a notice under this section, and
  - (b) may specify a period of less than 28 days in such a notice as the period for representations,if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.
- (5) OFCOM are not required under this section—
  - (a) to publish any matter that is confidential in accordance with subsection (6) or (7); or
  - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (6) A matter is confidential under this subsection if—
  - (a) it relates specifically to the affairs of a particular body; and
  - (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (7) A matter is confidential under this subsection if—
  - (a) it relates specifically to the private affairs of an individual; and
  - (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.]

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**Textual Amendments**

**F101** S. 106ZA inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 313**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with [art. 11](#))

**F102 106A Variation of local licence following change of control.**

.....

**Textual Amendments**

**F102** Ss. 106A-108 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](#))

**F102 107 Party political broadcasts.**

.....

**Textual Amendments**

**F102** Ss. 106A-108 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](#))

**F102 108 Promotion of equal opportunities in relation to employment by holder of national licence.**

.....

**Textual Amendments**

**F102** Ss. 106A-108 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](#))

*Enforcement of licences*

**109 Power to require scripts etc. or broadcasting of correction or [F103] a statement of findings].**

- (1) If [F104] OFCOM] 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 [F104] OFCOM] under or by virtue of any provision of this Part, they may serve on him a notice—
- (a) stating that [F104] OFCOM] 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.

*Status: Point in time view as at 10/12/2020.*

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- (2) If, at any time during the period specified in a notice under subsection (1), [F<sup>104</sup>OFCOM] 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), [F<sup>104</sup>OFCOM] may direct him—
- (a) to provide [F<sup>104</sup>OFCOM] 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 [F<sup>104</sup>OFCOM] 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 [F<sup>104</sup>OFCOM] 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 [F<sup>103</sup>a statement of findings] (or both) under this subsection,
- they may (subject to subsection (4)) direct the licence holder to include in the licensed service a correction or [F<sup>103</sup>a statement of findings] (or both) in such form, and at such time or times, as they may determine.
- (4) [F<sup>104</sup>OFCOM] shall not give any person a direction under subsection (3) unless they have given him a reasonable opportunity of making representations to [F<sup>104</sup>OFCOM] about the matters complained of.
- (5) Where the holder of a licence includes a correction or [F<sup>103</sup>a statement of findings] 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.
- [F<sup>105</sup>(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.]

#### Textual Amendments

- F103** Words in s. 109 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 344(2)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F104** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 50** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F105** S. 109(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 344(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C10** 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**
- C11** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 250(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)



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**C12** S. 109(3) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, **Sch. para. 2(b)** (with art. 5)

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

- (1) If [<sup>F104</sup>OFCOM] 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 [<sup>F104</sup>OFCOM];
  - (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.
- [<sup>F106</sup>(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).
- (1B) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 5 per cent. of the qualifying revenue for his last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above.]
- (3) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of any other licence shall not exceed [<sup>F107</sup>£250,000].
- (4) [<sup>F104</sup>OFCOM] 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), [<sup>F104</sup>OFCOM] 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 [<sup>F104</sup>OFCOM] 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.

*Status: Point in time view as at 10/12/2020.*

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F108(7) .....

#### Textual Amendments

- F104** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 50](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F106** S. 110(1A)-(1D) substituted for s. 110(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 7\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F107** Words in s. 110(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 7\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F108** S. 110(7) 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)

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

- C11** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 250\(3\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C13** S. 110(1B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C14** S. 110(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, [Sch. para. 3\(d\)](#) (with art. 5)
- C15** S. 110(3): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### 111 Power to revoke licences.

- (1) If [<sup>F104</sup>OFCOM] are satisfied—
- 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
  - 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—
- stating that [<sup>F104</sup>OFCOM] are satisfied as mentioned in subsection (1);
  - 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
  - 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, [<sup>F104</sup>OFCOM] will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) [<sup>F104</sup>OFCOM] are satisfied—
- that the person on whom the notice was served has failed to take the steps specified in it, and
  - 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.

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- (4) If [<sup>F104</sup>OFCOM] 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 [<sup>F104</sup>OFCOM] 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 [<sup>F104</sup>OFCOM] 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) [<sup>F104</sup>OFCOM] 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.

#### Textual Amendments

**F104** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 50** (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

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

**C11** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 250(3)**, 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

**C16** 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**

**C17** S. 111(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, **Sch. para. 3(e)** (with art. 5)

#### [<sup>F109</sup>111A] Enforcement of licences held by BBC companies.

Where [<sup>F104</sup>OFCOM] —

- (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),

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[<sup>F104</sup>OFCOM] shall send a copy of the direction, notice or representations to the Secretary of State.]

#### Textual Amendments

**F104** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 50](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F109** S. 111A inserted (24.7.1996) by [1996 c. 55, s. 136, 149\(1\)\(f\), Sch. 8 para. 7](#) (with [s. 43\(1\)\(6\)](#))

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

**C11** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 250\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

### [<sup>F110</sup>111B] Suspension of licences for inciting crime or disorder

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence granted under this Chapter if they are satisfied that—
  - (a) the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,
  - (b) in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act 2003, and
  - (c) the failure would justify the revocation of the licence.
- (2) A notice under this subsection must—
  - (a) state that OFCOM are satisfied as mentioned in subsection (1),
  - (b) specify the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned there,
  - (c) state that OFCOM may revoke the licence after the end of the period of 21 days beginning with the day on which the notice is served on the licence holder, and
  - (d) inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either—
  - (a) the revocation of the licence takes effect, or
  - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder in the 21 day period mentioned in subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they must serve on the licence holder a notice revoking the licence.
- (5) The revocation of a licence by a notice under subsection (4) takes effect from whatever time is specified in the notice.
- (6) That time must not be earlier than the end of the period of 28 days beginning with the day on which the notice under subsection (4) is served on the licence holder.
- (7) Section 111 does not apply to the revocation of a licence under this section.]

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**Status:** Point in time view as at 10/12/2020.

**Changes to legislation:** Broadcasting Act 1990, Chapter II is up to date with all changes known to be in force on or before 26 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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**Textual Amendments**

**F110** S. 111B substituted (27.6.2017) by Digital Economy Act 2017 (c. 30), ss. 91(1), 118(2)

**Status:**

Point in time view as at 10/12/2020.

**Changes to legislation:**

Broadcasting Act 1990, Chapter II is up to date with all changes known to be in force on or before 26 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.