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## SCHEDULES

### SCHEDULE 12

Section 134.

#### TRANSITIONAL PROVISIONS RELATING TO EXISTING CABLE SERVICES

##### PART I

##### GENERAL

1 (1) In this Schedule—

“the 1984 Act” means the <sup>M1</sup>Cable and Broadcasting Act 1984;

“diffusion service” and “prescribed diffusion service” have the same meaning as in Part I of the 1984 Act;

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

and in Part III of this Schedule “relevant licence” means a licence to provide a prescribed or other diffusion service in force by virtue of paragraph 1, 3, 5 or 8 in Part II of this Schedule.

(2) Any order which, immediately before the transfer date, is in force under section 2(3) of the 1984 Act (meaning of “cable programme service” etc.) shall continue in force on and after that date for the purposes of the definition of “prescribed diffusion service” applied by sub-paragraph (1).

##### Marginal Citations

M1 1984 c. 46.

2 This Schedule applies to a licence granted under section 58 of the <sup>M2</sup>Telecommunications Act 1984 (power of Secretary of State to license cable services) as it applies to one granted under section 4 of the <sup>M3</sup>Cable and Broadcasting Act 1984 (power of Cable Authority to license such services).

##### Marginal Citations

M2 1984 c. 12.

M3 1984 c. 46.

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## PART II

### LICENSING OF EXISTING CABLE SERVICES

#### *Prescribed diffusion services: continuation in force of existing licences*

- 1 (1) Subject to paragraph 2 below, any licence to provide a prescribed diffusion service which is in force under Part I of the 1984 Act immediately before the transfer date shall, notwithstanding any repeals made by this Act, continue in force (subject to and in accordance with the provisions of this Schedule) for the remainder of the period specified in the licence.
- (2) Where any licence continues in force by virtue of sub-paragraph (1), any conditions which—
- (a) were included in it in pursuance of any provision of the 1984 Act, and
  - (b) were in force immediately before the transfer date,
- shall similarly continue in force (subject to the provisions of this Schedule), but any reference in the licence to the Cable Authority shall be construed, in relation to any time falling on or after that date, as a reference to the Commission.
- (3) Without prejudice to the generality of paragraph 2(4) in Part III of this Schedule, the Commission may, in accordance with that provision, make such variations of a licence which continues in force by virtue of sub-paragraph (1) above as appear to them to be appropriate in consequence of any of the provisions of this Schedule.

#### *Prescribed diffusion services: replacement of cable licences by local delivery licences*

- 2 (1) Where—
- (a) any person is the holder of a licence to provide a prescribed diffusion service, being a licence to which paragraph 1(1) above applies (“the existing licence”), and
  - (b) the closing date for the making of applications for the licence under section 6 of the 1984 Act fell before 7th November 1988,
- that person may, within the period of six months beginning with the transfer date, request the Commission to grant him a licence under Part II of this Act to provide a local delivery service for the area in which the prescribed diffusion service is authorised to be provided under the existing licence.
- (2) Where any request is duly made to them under sub-paragraph (1), the Commission shall (notwithstanding anything in sections 74 to 76 of this Act) grant the licence applied for; and, on the coming into force of that licence, the existing licence shall cease to have effect.
- (3) A local delivery licence granted in pursuance of this paragraph may authorise the licensed service to be provided by wireless telegraphy to such extent as is specified in the licence.
- (4) Nothing in section 77 of this Act shall apply to such a local delivery licence until such time (if any) as it is renewed in accordance with sub-paragraph (5).
- (5) Section 78 of this Act shall apply to such a local delivery licence as if—

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- (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period of fifteen years beginning with the date of the coming into force of the existing licence;
  - (b) in subsection (4), paragraph (b) were omitted;
  - (c) subsection (5) were omitted;
  - (d) in subsection (6)(b), the words from “a different” to “as” were omitted; and
  - (e) in subsection (9), the reference to any conditions included in the licence in pursuance of section 77 were a reference to any conditions so included in accordance with sub-paragraph (6) below.
- (6) Where such a local delivery licence is to be renewed in accordance with sub-paragraph (5), the Commission shall (notwithstanding section 3(4) of this Act, as applied by section 73(3)) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (4).
- (7) Section 3(3) of this Act shall, in its application (in accordance with section 73(3)) to a local delivery licence granted in pursuance of this paragraph, have effect as if the reference to Part I of this Act included a reference to this Part of this Schedule.
- (8) Section 81(3) and (4) of this Act shall not apply in relation to a local delivery licence granted in pursuance of this paragraph.
- (9) Except as provided in the preceding provisions of this paragraph, Part II of this Act applies to a local delivery licence granted in pursuance of this paragraph as it applies to any other such licence granted under that Part.

*Prescribed diffusion services: grant of new licences to provide existing services*

- 3
- (1) The Commission may on or after the transfer date grant a licence to provide a prescribed diffusion service (“the new service”) if—
- (a) the new service would be authorised to be provided in the same area as that in which a prescribed diffusion service (“the existing service”) is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies;
  - (b) the licence to provide the new service would come into force on the expiry of the licence to provide the existing service;
  - (c) the applicant for the licence to provide the new service is the holder of the licence to provide the existing service; and
  - (d) after the expiry of the latter licence there will remain in force under Part II of the <sup>M4</sup>Telecommunications Act 1984 a licence which authorises the running of the telecommunication system by means of which the existing service is provided.
- (2) A licence granted under this paragraph shall be in writing and (subject to the provisions of this Schedule) shall continue in force for such period not exceeding eight years as may be specified in the licence.
- (3) Any such licence may include—
- (a) such conditions as appear to the Commission to be requisite having regard to the duties imposed on them by virtue of this Schedule;
  - (b) conditions requiring the rendering to the Commission of a payment on the grant of the licence or payments during the currency of the licence (or both)

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- of such amount or amounts as may be determined by or under the licence;  
 and
- (c) conditions requiring the holder of the licence to furnish to the Commission, in such manner and at such times as they may reasonably require, such information as they may require for the purpose of exercising the functions conferred on them by virtue of this Schedule.
- (4) Without prejudice to the generality of paragraph (a) of sub-paragraph (3), conditions included in a licence by virtue of that paragraph may require the holder of the licence—
- (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified; or
- (b) except in so far as the Commission consent to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified.
- (5) Any application for the grant of a licence under this paragraph must be in writing; and in deciding whether to grant such a licence the Commission shall take into account all matters appearing to them to be relevant.
- (6) No person shall, in connection with a particular licence to which paragraph 1(1) above applies, be granted both a licence granted in pursuance of this paragraph and a licence granted in pursuance of paragraph 4 below; and that paragraph shall have effect subject to this sub-paragraph.

**Marginal Citations**

**M4** 1984 c. 12.

*Prescribed diffusion services: cable licences to be succeeded on their expiry by local delivery licences*

- 4 (1) Subject to the following provisions of this paragraph, a person who is the holder of a licence to provide a prescribed diffusion service, being a licence to which paragraph 1(1) above applies (“the existing licence”), may apply to the Commission for the grant, as from the date on which the existing licence is due to expire (“the expiry date”), of a licence under Part II of this Act to provide a local delivery service for the area in which the prescribed diffusion service is authorised to be provided under the existing licence.
- (2) An application under sub-paragraph (1)—
- (a) may be made by the holder of the existing licence not earlier than five years before the expiry date and not later than the relevant date; and
- (b) must be in writing and specify—
- (i) the area which would be covered by the applicant’s proposed local delivery service, and
- (ii) the technical means by which that service would be provided.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate but not beyond that date.

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- (4) In sub-paragraphs (2) and (3) “the relevant date” means the date which the Commission determine to be that by which they would need to publish a notice under section 74 of this Act if they were to grant, as from the expiry date, such a licence under Part II of this Act as is mentioned in sub-paragraph (1).
- (5) Notwithstanding anything in sections 74 to 76 of this Act, where an application under sub-paragraph (1) has been duly made to the Commission, they may only refuse the application if—
- (a) they propose to grant, as a replacement for the existing licence, a local delivery licence authorising the provision of a local delivery service for an area which would be different from that in which the applicant’s service is authorised to be provided under the existing licence (“the franchise area”); or
  - (b) the applicant is not, at the time when he makes his application, providing a prescribed diffusion service throughout the whole of the franchise area; or
  - (c) it appears to them that the applicant’s proposed local delivery service would not cover the whole of the franchise area; or
  - (d) it appears to them that any telecommunication system proposed to be used by the applicant in the provision of that service would not be acceptable to the relevant licensing authorities.
- (6) A local delivery licence granted in pursuance of this paragraph shall come into force on the expiry date.
- (7) Subject to sub-paragraph (8), subsections (6) to (9) of section 78 of this Act shall apply in connection with the grant of an application for a local delivery licence under sub-paragraph (1) above as they apply in connection with the grant of an application for the renewal of a local delivery licence under subsection (1) of that section.
- (8) In the application of those subsections in accordance with sub-paragraph (7)—
- (a) any reference to the renewal of a local delivery licence shall be construed as a reference to the grant of such a licence in pursuance of this paragraph (and related expressions shall be construed accordingly);
  - (b) in subsection (6)(b), the words from “a different” to “as” shall be omitted;
  - (c) in subsection (7), the words “, in accordance with sections 74 to 76, a licence” shall be substituted for “a fresh licence”; and
  - (d) in subsection (8), the words from “formally” to “so” shall be omitted.
- (9) Sub-paragraphs (3) and (7) to (9) of paragraph 2 above shall have effect in relation to a local delivery licence granted in pursuance of this paragraph as they have effect in relation to such a licence granted in pursuance of that paragraph.
- (10) In this paragraph “the relevant licensing authorities” has the same meaning as in section 75 of this Act.

*Other diffusion services: continuation in force of existing licences*

- 5 (1) Subject to paragraph 7(1) below, where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which—
- (a) is not a prescribed diffusion service, but
  - (b) is provided in an area which is comprised in the area in which such a service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies,

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the licence shall, notwithstanding any repeals made by this Act, continue in force (subject to and in accordance with the provisions of this Schedule) for the remainder of the period specified in the licence.

(2) Where any licence continues in force by virtue of sub-paragraph (1), any conditions which—

- (a) were included in it in pursuance of any provision of the 1984 Act, and
- (b) were in force immediately before the transfer date,

shall similarly continue in force (subject to the provisions of this Schedule), but any reference in the licence to the Cable Authority shall be construed, in relation to any time falling on or after that date, as a reference to the Commission.

(3) Without prejudice to the generality of paragraph 2(4) in Part III of this Schedule, the Commission may, in accordance with that provision, make such variations of a licence which continues in force by virtue of sub-paragraph (1) above as appear to them to be appropriate in consequence of any of the provisions of this Schedule.

(4) Where—

- (a) a licence to which sub-paragraph (1) applies (“the relevant licence”) is due to expire on a particular date in accordance with that sub-paragraph (being a date falling within the period specified in sub-paragraph (5)), and
- (b) it appears to the Commission that on that date there would be in force either—

- (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (1)(b), or
- (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service is for the time being provided under the relevant licence (“the relevant service”), but

- (c) it also appears to them that on that date the holder of any such licence would not be in a position to provide his licensed service for all of the dwelling-houses for which the relevant service is for the time being provided,

the Commission shall so vary the relevant licence as to secure that (subject to sub-paragraph (5)) the licence continues in force until such time subsequent to that date as they may specify in a notice given to the holder of the licence; and the Commission shall not specify a time for the purposes of this sub-paragraph unless they have reasonable grounds for believing that, at that time, the holder of any such licence as is mentioned in paragraph (b)(i) or (ii) above would be in a position to provide his licensed service for all of the dwelling-houses referred to in paragraph (c) above.

(5) A licence to which sub-paragraph (1) applies shall not continue in force in accordance with that sub-paragraph or sub-paragraph (4) beyond the end of the period of eight years beginning with the transfer date.

(6) If on the date when such a licence ceases to be in force (“the expiry date”) either of the conditions specified in sub-paragraph (7) is satisfied, the holder of that licence (“the relevant licence”) shall be granted by the Commission, as from the expiry date, a licence under Part II of this Act to provide a local delivery service for the area in which a diffusion service was being provided under the relevant licence immediately before that date.

(7) The conditions referred to in sub-paragraph (6) are—

- (a) that neither of the following is in force, namely—

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- (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (1)(b), or
    - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service was being provided under the relevant licence immediately before the expiry date;
  - (b) that any such licence as is mentioned in paragraph (a)(i) or (ii) above is in force but it appears to the Commission that the holder of the licence is not in a position to provide his licensed service for all of the dwelling-houses for which a diffusion service was being provided under the relevant licence immediately before the expiry date.
- (8) Subject to sub-paragraph (9), the following provisions, namely—
- (a) sub-paragraphs (7) to (9) of paragraph 2 above, and
  - (b) sub-paragraphs (2) to (5) of paragraph 6 below,
- shall have effect in relation to a local delivery licence granted in pursuance of sub-paragraph (6) above as they have effect in relation to such a licence granted in pursuance of paragraph 2 above or (as the case may be) paragraph 6 below.
- (9) In its application in relation to a licence granted in pursuance of sub-paragraph (6), paragraph 6(4)(a) shall have effect with the substitution of a reference to the date as from which the licence is granted for the reference to the transfer date.

*Other diffusion services: replacement of cable licences by local delivery licences*

- 6 (1) Subject to paragraph 7(1) below, where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which is neither—
- (a) a prescribed diffusion service, nor
  - (b) a diffusion service to which paragraph 5(1) above applies,
- the licence shall cease to have effect on the transfer date; but the holder of the licence shall be granted by the Commission as from that date a licence under Part II of this Act to provide a local delivery service for the area in which the diffusion service was authorised to be provided immediately before that date.
- (2) So much of section 73(2) of this Act as relates to the provision of local delivery services by wireless telegraphy shall not apply to a local delivery licence granted in pursuance of this paragraph.
- (3) Any local delivery licence granted in pursuance of this paragraph shall be so granted notwithstanding anything in sections 74 to 76 of this Act; and nothing in section 77 of this Act shall apply to such a local delivery licence until such time (if any) as it is renewed in accordance with sub-paragraph (4).
- (4) Section 78 of this Act shall apply to such a local delivery licence as if—
- (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period of five years beginning with the transfer date, and the second reference to a period of fifteen years were a reference to a period of five years;
  - (b) in subsection (2), the reference to five years were a reference to three years;
  - (c) in subsection (4), paragraph (b) were omitted;
  - (d) subsection (5) were omitted;

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- (e) in subsection (6)(b), the words from “a different” to “as” were omitted; and
- (f) in subsection (9), the reference to any conditions included in the licence in pursuance of section 77 were a reference to any conditions so included in accordance with sub-paragraph (5).

- (5) Where such a local delivery licence is to be renewed in accordance with sub-paragraph (4), the Commission shall (notwithstanding section 3(4) of this Act, as applied by section 73(3)) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (3).
- (6) Sub-paragraphs (7) to (9) of paragraph 2 above shall have effect in relation to a local delivery licence granted in pursuance of this paragraph as they have effect in relation to such a licence granted in pursuance of that paragraph.

*Other diffusion services: certain licences to cease to have effect*

- 7 (1) Neither paragraph 5(1) nor paragraph 6(1) above applies to a licence to provide a diffusion service—
  - (a) for a single building, or
  - (b) in an area in which there are not more than the prescribed number of dwelling-houses;
 and any such licence shall cease to have effect on the transfer date.
- (2) In sub-paragraph (1) “the prescribed number” means such number as the Secretary of State may by order prescribe; and any order under this sub-paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Other diffusion services: certain unlicensed services to be licensed as cableservices or local delivery services*

- 8 (1) This paragraph has effect in relation to any diffusion service—
  - (a) which immediately before the transfer date is, by virtue of paragraph 1 of the Schedule to the <sup>M5</sup>Cable Programme Services (Exceptions) Order 1988, not required to be licensed under Part I of the 1984 Act; and
  - (b) which is for the time being provided by means of a telecommunication system which has not previously been used for the purpose of providing a service licensed under that Part of that Act; but
  - (c) which on that date either—
    - (i) constitutes a local delivery service for the purposes of Part II of this Act, or
    - (ii) is specified in an order made by the Secretary of State.
- (2) Where immediately before that date any such service (“the relevant service”) is provided in an area which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies, the Commission shall, if the person providing the relevant service so requests before that date, grant that person as from that date a licence to provide a diffusion service in the area in which the relevant service was being provided immediately before that date.



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- (3) A licence granted under sub-paragraph (2) shall be in writing and (subject to the provisions of this Schedule) shall continue in force for the period of five years beginning with the transfer date.
- (4) Sub-paragraphs (3) and (4) of paragraph 3 above shall apply to a licence granted under sub-paragraph (2) as they apply to a licence granted under that paragraph.
- (5) Where—
- (a) a licence granted under sub-paragraph (2) (“the relevant licence”) is due to expire on a particular date in accordance with sub-paragraph (3), and
  - (b) it appears to the Commission that on that date there would be in force either—
    - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (2), or
    - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service is for the time being provided under the relevant licence (“the relevant service”), but
  - (c) it also appears to them that on that date the holder of any such licence would not be in a position to provide his licensed service for all of the dwelling-houses for which the relevant service is for the time being provided,
- the Commission shall so vary the relevant licence as to secure that (subject to sub-paragraph (6)) the licence continues in force until such time subsequent to that date as they may specify in a notice given to the holder of the licence; and the Commission shall not specify a time for the purposes of this sub-paragraph unless they have reasonable grounds for believing that, at that time, the holder of any such licence as is mentioned in paragraph (b)(i) or (ii) above would be in a position to provide his licensed service for all of the dwelling-houses referred to in paragraph (c) above.
- (6) A licence granted under sub-paragraph (2) shall not continue in force in accordance with sub-paragraph (5) beyond the end of the period of eight years beginning with the transfer date.
- (7) If on the date when such a licence ceases to be in force (“the expiry date”) either of the conditions specified in sub-paragraph (8) is satisfied, the holder of that licence (“the relevant licence”) shall be granted by the Commission, as from the expiry date, a licence under Part II of this Act to provide a local delivery service for the area in which a diffusion service was being provided under the relevant licence immediately before that date.
- (8) The conditions referred to in sub-paragraph (7) are—
- (a) that neither of the following is in force, namely—
    - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (2), or
    - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service was being provided under the relevant licence immediately before the expiry date;
  - (b) that any such licence as is mentioned in paragraph (a)(i) or (ii) above is in force but it appears to the Commission that the holder of the licence is not in a position to provide his licensed service for all of the dwelling-houses

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for which a diffusion service was being provided under the relevant licence immediately before the expiry date.

- (9) Where immediately before the transfer date any such diffusion service as is mentioned in sub-paragraph (1) above is not being provided in any such area as is mentioned in sub-paragraph (2), the Commission shall, if the person providing the service so requests before that date, grant that person as from that date a licence under Part II of this Act to provide a local delivery service for the area in which the diffusion service was being provided immediately before that date.
- (10) Subject to sub-paragraph (11), the following provisions, namely—
- (a) sub-paragraphs (7) to (9) of paragraph 2 above, and
  - (b) sub-paragraphs (2) to (5) of paragraph 6 above,
- shall have effect in relation to a local delivery licence granted in pursuance of sub-paragraph (7) or (9) above as they have effect in relation to such a licence granted in pursuance of paragraph 2 or (as the case may be) paragraph 6 above.
- (11) In its application in relation to a licence granted in pursuance of sub-paragraph (7) above, paragraph 6(4)(a) shall have effect with the substitution of a reference to the date as from which the licence is granted for the reference to the transfer date.
- (12) In the case of a local delivery licence granted in pursuance of sub-paragraph (9) above, nothing in paragraph 1(1) in Part II of Schedule 2 to this Act shall have the effect of rendering—
- (a) a local authority, or
  - (b) a body which is controlled by such an authority,
- a disqualified person in relation to the licence during the period of five years beginning with the date of its coming into force; and in this sub-paragraph “local authority” has the same meaning as in that Schedule.

#### Marginal Citations

M5 [S.I. 1988/1370](#).

*Other diffusion services: services falling partly within and partly outside franchise areas*

- 9 (1) Where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which—
- (a) is not a prescribed diffusion service, but
  - (b) is provided in an area (“the relevant area”) only part of which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) applies (“the franchise area”),
- then (subject to paragraph 7 above)—
- (i) paragraph 5 above shall apply to the licence to the extent that it authorises the provision of a diffusion service in so much of the relevant area as is comprised in the franchise area, and
  - (ii) paragraph 6(1) above shall apply to the licence to the extent that it authorises the provision of such a service in so much of the relevant area as is not so comprised.

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- (2) The reference in paragraph 6(1) to the area in which a diffusion service was authorised to be provided immediately before the transfer date shall accordingly be construed, in relation to a licence to which sub-paragraph (1) above applies, as a reference to so much of that area as is not comprised in the franchise area.
- (3) The reference in paragraph 7(1) above to a licence to provide a diffusion service shall be construed, in relation to a licence to which sub-paragraph (1) above applies—
  - (a) in connection with the application of paragraph 5(1) above, as a reference to the licence to the extent that it authorises the provision of such a service as is mentioned in sub-paragraph (1)(i) above; and
  - (b) in connection with the application of paragraph 6(1) above, as a reference to the licence to the extent that it authorises the provision of such a service as is mentioned in sub-paragraph (1)(ii) above.
- (4) Where immediately before the transfer date any such diffusion service as is mentioned in paragraph 8(1) above is provided in an area (“the relevant area”) only part of which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies (“the franchise area”), then (subject to sub-paragraph (5) below)—
  - (a) paragraph 8(2) above shall apply to the service to the extent that it is, immediately before that date, being provided in so much of the relevant area as is comprised in the franchise area, and
  - (b) paragraph 8(9) above shall apply to the service to the extent that it is then being provided in so much of the relevant area as is not so comprised.
- (5) Neither paragraph 8(2) nor paragraph 8(9) shall apply to a diffusion service in accordance with sub-paragraph (4) above if the part of the service to which it would otherwise so apply would serve only—
  - (a) a single building, or
  - (b) an area in which there are not more than the prescribed number of dwelling-houses;and in paragraph (b) “the prescribed number” has the same meaning as in paragraph 7(1) above.

*Restricted services: replacement of existing licences*

- 10 (1) Where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a restricted service (“the restricted service licence”), the licence shall cease to have effect on the transfer date; but if he makes the appropriate request before that date the holder of the licence shall—
  - (a) where the restricted service consists in the provision of television programmes, be granted by the Commission as from that date a licence under Part I of this Act to provide a licensable programme service, or
  - (b) where the restricted service consists in the provision of sound programmes, be granted by the Radio Authority as from that date a licence under Part III of this Act to provide a licensable sound programme service,being a service of such a description as will, in the opinion of the Commission or (as the case may be) the Radio Authority, enable the service to be provided under the licence mentioned in paragraph (a) or (b) to correspond as nearly as possible to the service provided under the restricted service licence.
- (2) In sub-paragraph (1) “the appropriate request”—

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- (a) in a case to which paragraph (a) of that sub-paragraph applies, means a request to the Commission; and
  - (b) in a case to which paragraph (b) of that sub-paragraph applies, means a request to the Radio Authority.
- (3) Nothing in section 47(1) to (3) or (as the case may be) section 86(3)(b) or 113(1) or (2) of this Act shall apply in relation to a licence granted in pursuance of sub-paragraph (1); and any such licence shall (subject to the provisions of Part I or, as the case may be, Part III of this Act) continue in force for the remainder of the period specified in the restricted service licence.
- (4) Section 3(3) of this Act shall, in its application to a licence granted in pursuance of sub-paragraph (1)(a), have effect as if the reference to Part I of this Act included a reference to this Part of this Schedule; and section 86(4) of this Act shall, in its application to a licence granted in pursuance of sub-paragraph (1)(b), have effect as if the reference to Part III of this Act included a reference to this Part of this Schedule.
- (5) Except as provided in sub-paragraphs (3) and (4)—
- (a) Part I of this Act applies to a licence granted in pursuance of sub-paragraph (1)(a) as it applies to any other licence granted under that Part to provide a licensable programme service; and
  - (b) Part III of this Act applies to a licence granted in pursuance of sub-paragraph (1)(b) as it applies to any other licence granted under that Part to provide a licensable sound programme service.
- (6) In this paragraph—
- “licensable programme service” has the same meaning as in Part I of this Act;
  - “licensable sound programme service” has the same meaning as in Part III of this Act;
  - “restricted service” has the same meaning as in Part I of the 1984 Act.

*Requests made under this Part*

- 11 Any request made to the Commission in pursuance of any provision of this Part of this Schedule must be in writing.

*Saving for liabilities under terminated licences*

- 12 (1) Where any licence ceases to have effect at any time on or after the transfer date by virtue of any provision of this Part of this Schedule, any liability of the licence holder which has accrued before that time under or by virtue of the licence shall not be affected by the licence so ceasing to have effect.
- (2) Where any such licence (“the existing licence”) so ceases to have effect but the licence holder is granted in its place a licence (“the new licence”) in pursuance of any provision of this Part of this Schedule, any agreement—
- (a) made between the licence holder and any other person before the time when the existing licence so ceases to have effect, and
  - (b) framed (whether expressly or by implication) by reference to the existing licence or to the licence holder’s status as the holder of that licence,
- shall (unless it expressly provides otherwise) have effect as from that time with such modifications as are necessary to take account of the replacement of the existing

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licence by the new licence or of the licence holder's new status as the holder of the new licence (as the case may require).

- (3) References in sub-paragraph (2) to an agreement include references—
- (a) to an oral agreement, and
  - (b) to a deed, bond or other instrument.

### PART III

#### PROVISIONS RELATING TO LICENCES IN FORCE UNDER OR BY VIRTUE OF THIS SCHEDULE

##### *Effect of relevant licences*

- 1 (1) Subject to sub-paragraph (4) below, a relevant licence shall have effect only so as to authorise the provision of a service consisting in the use of a telecommunication system for the purpose of the delivery of one or more of the following, namely—
- (a) any of the services specified in section 72(2) of this Act, or
  - (b) any television or local sound broadcasting service provided by the Commission or the Radio Authority in accordance with Schedule 11 to this Act,
- for simultaneous reception in dwelling-houses in the area for which the licensed service is to be provided.
- (2) Accordingly the holder of any such licence shall not be subject to regulation under Part I or Part III of this Act as respects the programmes included in any service delivered by the telecommunication system in question except—
- (a) to the extent that he is to be regarded for the purposes of that Part of this Act as providing any such service, or
  - (b) in the case of Part I, in consequence of sub-paragraph (3)(b) below.
- (3) In section 79 of this Act—
- (a) subsection (1) shall apply to the holder of a relevant licence and the service authorised to be provided under such a licence (“a licensed diffusion service”) as it applies to the holder of a local delivery licence and his local delivery service; and
  - (b) subsections (2) and (3) shall apply to a licensed diffusion service as they apply to a licensed local delivery service.
- (4) The holder of a relevant licence shall be taken to be authorised by his licence to include in his licensed diffusion service advertisements which are inserted by him and are not included in any service falling within section 72(2) of this Act; but, if any such advertisements are so included by him, sections 8 and 9 of this Act shall have effect as if the delivery of those advertisements constituted the provision of a service licensed under Part I of this Act and he were the holder of a licence in force under that Part.
- (5) Section 80 of this Act shall apply to the holder of a relevant licence as it applies to the holder of a local delivery licence.
- (6) Section 82(1) of this Act shall not apply to any local delivery service which is a licensed diffusion service.

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*General provisions about relevant licences*

- 2 (1) It shall be the duty of the Commission to discharge their functions under this Schedule as respects the licensing of diffusion services in the manner which they consider is best calculated to ensure fair and effective competition in the provision of such services and services connected with them.
- (2) The Commission—
- (a) shall not grant a licence to any person under paragraph 3 or 8(2) in Part II of this Schedule unless they are satisfied that he is a fit and proper person to hold it; and
  - (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a relevant licence, that person does not remain the holder of the licence;
- and nothing in that Part of this Schedule shall be construed as affecting the operation of this sub-paragraph or paragraph 3 below.
- (3) The payment or payments required to be rendered to the Commission—
- (a) in the case of a licence which continues in force by virtue of paragraph 1 or 5 in Part II of this Schedule, by virtue of conditions included in it in pursuance of section 4(5)(b) of the 1984 Act, or
  - (b) by virtue of conditions included in a licence in pursuance of paragraph 3(3) (b) or 8(4) in Part II of this Schedule,
- shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of the licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to this Act.
- (4) The Commission may vary a relevant licence by a notice served on the holder of the licence if—
- (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Commission about the variation.
- (5) The Commission shall not under sub-paragraph (4)—
- (a) vary the period for which a licence to provide a prescribed diffusion service is to continue in force if that period, as varied, would exceed—
    - (i) fifteen years in the case of a licence to which section 4(4)(a) of the 1984 Act applied immediately before the transfer date, or
    - (ii) eight years in the case of any other licence, or
  - (b) vary the period for which—
    - (i) a licence to which paragraph 5(1) in Part II of this Schedule applies, or
    - (ii) a licence granted in pursuance of paragraph 8(2) in that Part, is to continue in force.
- (6) Sub-paragraph (4)(a) does not apply to any variation effected in accordance with paragraph 5(4) or 8(5) in Part II of this Schedule; but any such variation shall be effected by means of a notice served by the Commission on the holder of the licence in question.

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- (7) Section 3(6) and (7) of this Act shall apply to a relevant licence as they apply to a licence granted under Part II of this Act.

*Restrictions on the holding of certain relevant licences*

- 3 (1) The Commission shall do all that they can to secure that none of the following, namely—
- (a) a local authority,
  - (b) a body whose objects are wholly or mainly of a religious or political nature,
  - (c) an individual who is an officer of a body falling within paragraph (b) above, or
  - (d) a body which is controlled by a person falling within any of the preceding paragraphs, or by two or more such persons taken together,
- becomes or remains the holder of a licence to which this paragraph applies.
- (2) The Commission shall do all that they can to secure that a person who is (or is an associate of)—
- (a) a programme contractor for the provision of television programmes or sound broadcasts for any area or locality,
  - (b) the holder of a licence to provide a regional Channel 3 service or a local radio service for any area or locality, or
  - (c) the proprietor of a local newspaper circulating wholly or mainly in any area, does not become or remain the holder of a licence to which this paragraph applies if the service to be provided under that licence is to be so provided in any part of that area or locality.
- (3) The Commission shall do all that they can to secure that a person who is (or is an associate of) the holder of a licence to provide Channel 5 does not become or remain the holder of a licence to which this paragraph applies if the service to be provided under that licence is to be so provided in any part of the area for which the Channel 5 service is to be provided.
- (4) The Commission shall do all that they can to secure that a body corporate in which—
- (a) any of the persons mentioned in sub-paragraph (5) is a participant, or
  - (b) any of the persons mentioned in sub-paragraph (6) is a principal participant,
- does not become or remain the holder of a licence to which this paragraph applies if, in the opinion of the Commission, that person's participation in the body corporate has led, is leading or is likely to lead to results which are adverse to the public interest.
- (5) The persons referred to in sub-paragraph (4)(a) are—
- (a) a local authority;
  - (b) a body whose objects are wholly or mainly of a religious or political nature;
  - (c) the BBC and the Welsh Authority; and
  - (d) a body which is controlled by a person falling within any of the preceding paragraphs, or by two or more such persons taken together.
- (6) The persons referred to in sub-paragraph (4)(b) are—
- (a) a person who is a principal participant in another body corporate which is—
    - (i) the holder of a licence to which this paragraph applies, or

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- (ii) the holder of a local delivery licence;
  - (b) a programme contractor;
  - (c) the holder of a licence to provide any of the following services, namely a Channel 3 service, Channel 4, Channel 5, a domestic satellite service, a national radio service or a local radio service;
  - (d) the proprietor of a national or local newspaper;
  - (e) an advertising agent;
  - (f) an associate of a person falling within any of the preceding paragraphs;
  - (g) a person who has control over a body falling within any of the preceding paragraphs; and
  - (h) a body which is controlled by a person falling within any of paragraphs (a) to (f) above, or by two or more such persons taken together.
- (7) This paragraph applies to any relevant licence authorising the provision of a prescribed diffusion service.
- (8) In this paragraph—
- (a) “associate”, “local authority” and “participant” have the same meaning as in Schedule 2 to this Act, and “principal participant”, in relation to a body corporate, means a person who (whether alone or jointly with one or more other persons, and whether directly or through one or more nominees) holds or is beneficially entitled to not less than one-twentieth of the shares, or possesses not less than one-twentieth of the voting power, in that body corporate;
  - (b) any reference to a national or local newspaper is a reference to a newspaper which is, or is to be treated as, a national or local newspaper for the purposes of Part IV of that Schedule;
  - (c) “programme contractor” has the same meaning as in the <sup>M6</sup>Broadcasting Act 1981;
  - (d) any reference to a Channel 3 service (whether regional or otherwise), to Channel 4 or 5, or to a domestic satellite service shall be construed in accordance with section 71(1) of this Act; and
  - (e) any reference to a national or local radio service is a reference to a national or local service within the meaning of Part III of this Act.

**Marginal Citations**

**M6** 1981 c. 68.

*Inclusion of broadcasts in licensed services*

- [<sup>F14</sup> (1) The Commission shall do all that they can to secure that, subject to sub-paragraph (2) and to any exceptions for which the Secretary of State, after consultation with the Commission, the BBC and the Welsh Authority, may by order provide, every diffusion service provided by any person in any area under a relevant licence includes, by the reception and immediate re-transmission of the broadcasts, the programmes included in each relevant service provided for reception in that area.
- (2) The Commission may exempt any diffusion service from the requirement to include any relevant service if it appears to the Commission that, at the place where the holder of the licence to provide the diffusion service receives or would receive the relevant



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service, the relevant service is not capable of being received at a level satisfying such technical standards as the Commission may from time to time determine.

- (3) Where a relevant service provided for reception in an area for which a diffusion service is provided consists in the broadcasting for simultaneous reception of programmes contained in two or more programme schedules, then, so far as relating to that relevant service, the duty in sub-paragraph (1) shall be subject to the limitation in whichever of sub-paragraphs (4) and (5) is appropriate.
- (4) Where the programmes contained in one of the programme schedules are broadcast for reception in a greater part of the area than the programmes contained in the other schedule or any of the other schedules, the duty in sub-paragraph (1) so far as so relating shall extend only to the programmes contained in the first-mentioned schedule.
- (5) Where sub-paragraph (4) does not apply, the duty in sub-paragraph (1) so far as so relating shall extend only to the programmes contained in such one of the programme schedules as the relevant broadcasting body may determine.
- (6) For the purposes of this paragraph Channel 3 shall be taken to be a single service consisting in the broadcasting for simultaneous reception of programmes contained in several programme schedules.
- (7) Each person providing a relevant service (“the broadcaster”) shall provide any person providing a diffusion service with such assistance as he may reasonably require in relation to the technical arrangements for the re-transmission in pursuance of this paragraph of the broadcasts of that broadcaster.
- (8) In this paragraph—
  - “the relevant broadcasting body” means—
    - (a) in relation to any service provided by the BBC, the BBC, and
    - (b) in relation to any service licensed by the Commission, the Commission;
  - “relevant service” means any of the following services—
    - (a) Channel 3, Channel 4 and S4C,
    - (b) the teletext service referred to in section 49(2) of this Act, and
    - (c) the two television broadcasting services provided by the BBC on the passing of the Broadcasting Act 1996 and the teletext service provided by the BBC at that time.
- (9) Expressions used in sub-paragraphs (6) and (8) and in Part I of this Act have the same meaning in those sub-paragraphs as in that Part.
- (10) An order under sub-paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F1** Sch. 12 Pt. III paras. 4, 4A substituted (1.10.1996) for para. 4 by 1996 c. 55, s. 91(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

- [<sup>F2</sup>4A (1) Where the Commission are satisfied, in the case of any diffusion service which is provided under a relevant licence and by means of which one or more of the services specified in section 72(2) of this Act is delivered in digital form, that it would be appropriate, having regard to the extent of the use and proposed use of

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digital technology in the provision of the service, for the service to be treated as a digital diffusion service for the purposes of this paragraph, they shall serve a notice to that effect on the holder of the licence to provide the service; and in this paragraph "digital diffusion service" means a diffusion service in respect of which such a notice has been served.

- (2) Subsections (2) to (8) of section 78A of this Act shall have effect in relation to a digital diffusion service as they have effect in relation to a digital local delivery service (within the meaning of that section); and nothing in paragraph 4 shall have effect in relation to a digital diffusion service.]

#### Textual Amendments

- F2** Sch. 12 Pt. III paras. 4, 4A substituted (1.10.1996) for para. 4 by 1996 c. 55, s. 91(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

#### *Inclusion of local material in prescribed diffusion services*

- 5 (1) In the case of a licence which continues in force by virtue of paragraph 1 in Part II of this Schedule, nothing in this Schedule shall be construed as prejudicing the operation of any conditions included in the licence which—
- (a) were included in it in pursuance of section 4(5)(a) of the 1984 Act, and
  - (b) relate to the inclusion of such programmes, or to assisting such organisations, as are mentioned in section 7(2)(f) of that Act.
- (2) Where—
- (a) any licence ("the new licence") is granted under paragraph 3 in Part II of this Schedule, and
  - (b) the licence to provide the existing service (within the meaning of that paragraph) included any such conditions as are mentioned in subparagraph (1) above,
- the new licence shall include conditions corresponding to those conditions.

#### *Revocation of licences*

- 6 (1) Every relevant licence shall contain all such provisions as the Commission consider requisite or expedient to ensure that—
- (a) if, in view of any failure by the licence holder to comply with any condition of the licence or any direction given by the Commission, the Commission consider it necessary to do so in the public interest, or
  - (b) where the licence authorises the provision of a prescribed diffusion service, if the Commission consider it necessary to do so for the purpose of complying with paragraph 3 above, or
  - (c) where—
    - (i) the licence holder is a body, and
    - (ii) any change affecting the nature or characteristics of the body, or any change in the persons having control over or interests in the body, has taken place after the granting of the licence, and
    - (iii) the change is such that, if it fell to the Commission to determine whether to grant the licence to the body in the new circumstances

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of the case, they would be induced by the change to refrain from granting the licence to the body,

the Commission may revoke the licence by notice given to the licence holder and taking effect forthwith or on a date specified in the notice.

- (2) Before revoking a licence under a provision included in a licence in pursuance of sub-paragraph (1), the Commission shall—
- (a) give the licence holder a reasonable opportunity of making representations to them about the matters complained of; and
  - (b) consult the licensing authorities for the purposes of the <sup>M7</sup>Telecommunications Act 1984.

#### Marginal Citations

M7 1984 c. 12.

#### *Supplementary provisions*

- 7 (1) Any notice, direction or other thing given or done by or in relation to the Cable Authority—
- (a) in pursuance of section 4(5) or 17 of the 1984 Act, and
  - (b) in connection with any licence which continues in force as from the transfer date by virtue of paragraph 1 or 5 in Part II of this Schedule,
- shall, if in force or effective immediately before that date, have effect as from that date as if given or done by or in relation to the Commission.
- (2) Anything which immediately before that date was in the process of being done by or in relation to the Cable Authority may, if it was being so done as mentioned in paragraphs (a) and (b) of sub-paragraph (1), be continued on or after that date by or in relation to the Commission.

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