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SCHEDULES

SCHEDULE 12

TRANSITIONAL PROVISIONS RELATING TO EXISTING CABLE SERVICES

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.

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- (6) Section 82(1) of this Act shall not apply to any local delivery service which is a licensed diffusion service.

General provisions about relevant licences

- 2 (1) It shall be the duty of the Commission to discharge their functions under this Schedule as respects the licensing of diffusion services in the manner which they consider is best calculated to ensure fair and effective competition in the provision of such services and services connected with them.
- (2) The Commission—
- (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.

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- (6) Sub-paragraph (4)(a) does not apply to any variation effected in accordance with paragraph 5(4) or 8(5) in Part II of this Schedule; but any such variation shall be effected by means of a notice served by the Commission on the holder of the licence in question.
- (7) Section 3(6) and (7) of this Act shall apply to a relevant licence as they apply to a licence granted under Part II of this Act.

Restrictions on the holding of certain relevant licences

- 3 (1) The Commission shall do all that they can to secure that none of the following, namely—
- (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

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- (d) a body which is controlled by a person falling within any of the preceding paragraphs, or by two or more such persons taken together.
- (6) The persons referred to in sub-paragraph (4)(b) are—
- (a) a person who is a principal participant in another body corporate which is—
 - (i) the holder of a licence to which this paragraph applies, or
 - (ii) the holder of a local delivery licence;
 - (b) a programme contractor;
 - (c) the holder of a licence to provide any of the following services, namely a Channel 3 service, Channel 4, Channel 5, 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 ^{M1}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

M1 1981 c. 68.

Inclusion of broadcasts in licensed services

- [^{F14} (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

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- diffusion service provided by any person in any area under a relevant licence includes, by the reception and immediate re-transmission of the broadcasts, the programmes included in each relevant service provided for reception in that area.
- (2) The Commission may exempt any diffusion service from the requirement to include any relevant service if it appears to the Commission that, at the place where the holder of the licence to provide the diffusion service receives or would receive the relevant service, the relevant service is not capable of being received at a level satisfying such technical standards as the Commission may from time to time determine.
 - (3) Where a relevant service provided for reception in an area for which a diffusion service is provided consists in the broadcasting for simultaneous reception of 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.]

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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

- [^{F2}4A (1) Where the Commission are satisfied, in the case of any diffusion service which is provided under a relevant licence and by means of which one or more of the services specified in section 72(2) of this Act is delivered in digital form, that it would be appropriate, having regard to the extent of the use and proposed use of digital technology in the provision of the service, for the service to be treated as a digital diffusion service for the purposes of this paragraph, they shall serve a notice to that effect on the holder of the licence to provide the service; and in this paragraph "digital diffusion service" means a diffusion service in respect of which such a notice has been served.
- (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

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- (b) where the licence authorises the provision of a prescribed diffusion service, if the Commission consider it necessary to do so for the purpose of complying with paragraph 3 above, or
- (c) where—
 - (i) the licence holder is a body, and
 - (ii) any change affecting the nature or characteristics of the body, or any change in the persons having control over or interests in the body, has taken place after the granting of the licence, and
 - (iii) the change is such that, if it fell to the Commission to determine whether to grant the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from granting the licence to the body,

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

- (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 ^{M2}Telecommunications Act 1984.

Marginal Citations

M2 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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