

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 16 October 2007

on the compatibility with Community law of measures taken by the United Kingdom pursuant to Article 3a(1) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

(Text with EEA relevance)

(2007/730/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁽¹⁾, and in particular Article 3a(2) thereof,

Having regard to the opinion of the Committee established pursuant to Article 23a of Directive 89/552/EEC,

Whereas:

(1) By letter of 25 September 1998, the United Kingdom (hereinafter 'the UK') notified to the Commission measures taken pursuant to Article 3a(1) of Directive 89/552/EEC. On 2 November 1998, the Commission communicated those measures to the other Member States and received observations of the Committee established pursuant to Article 23a of Directive 89/552/EEC, at its meeting on 20 November 1998. By letter of 23 December 1998, the Commission informed the UK that there were doubts as to the scope of the measures notified which prevented it from assessing whether

those measures were compatible with Community law. The UK notified an amended version of these measures to the Commission by letter of 5 May 2000.

- (2) The Commission verified, within three months from this notification, that these measures are compatible with Community law, in particular as regards the proportionality of the measures and the transparency of the national consultation procedure.
- (3) In its examination, the Commission took into consideration the available data on the UK media landscape.
- (4) The list of events of major importance for society included in the UK measures was drawn up in a clear and transparent manner and a far-reaching consultation had been launched in the UK.
- (5) The Commission was satisfied that the events listed in the UK measures met at least two of the following criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance; and (iv) the fact that the event has traditionally been broadcast on free television and has commanded large television audiences.

⁽¹⁾ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

- (6) A significant number of the events listed in the UK measures, including the summer and winter Olympic Games as well as the World Cup Finals and the European Championship Finals tournaments, fall within the category of events traditionally considered to be of major importance for society, as referred to explicitly in recital 18 of Directive 97/36/EC. These events have a special general resonance in the UK in their entirety, as they are particularly popular with the general public (irrespective of the nationality of the participants), not just with those who usually follow sports events.
- (7) The FA Cup Final has a special general resonance in the UK as the pre-eminent single match in English domestic football and a true national occasion, as well as an event of worldwide renown.
- (8) The Scottish FA Cup Final has a special general resonance in Scotland, as an event of similar stature to the (English) FA Cup Final.
- (9) The Grand National has a general resonance in the UK as a long-established event of worldwide renown and appeal, as well as a generally recognised, distinct cultural importance for the population in that country, forming part of the UK national consciousness.
- (10) The Derby has a general resonance in the UK as the pre-eminent event in the flat racing season and a part of the national calendar, as well as a generally recognised, distinct cultural importance for the population in that country, as a quintessentially British occasion transcending social class and commanding interest throughout the country.
- (11) The Wimbledon Tennis Finals have a general resonance in the UK as the pre-eminent UK tennis tournament of worldwide renown, commanding extensive media coverage. Moreover, the general resonance and distinct cultural importance of this event in the UK is due to the success of the UK participants in this competition.
- (12) The Rugby League Challenge Cup Final and the Rugby World Cup tournament have a general resonance in the UK as events of wide general interest appealing to people who do not usually follow these competitions. The Six Nations Rugby Tournament matches involving home countries⁽¹⁾ have a special general resonance in the UK as an important event in the UK sporting calendar.
- (13) The cricket Test Matches played in England have a general resonance in the UK as the flagship events in the national summer sport, involving the England team and top overseas sides, with an appeal transcending social class and region. The Cricket World Cup matches (the final, semi-finals and matches involving home nations' teams) have a general resonance in the UK as they form part of the only self-contained world championship in this sport, involving the UK teams in competition at the highest level. Moreover, these cricket events have a generally recognised, distinct cultural importance for the population in the UK due to its multi-cultural appeal, which helps social cohesion and reinforces the UK's Commonwealth links.
- (14) The Commonwealth Games have a special general resonance in the UK as an established event involving UK competitors in high-level competition.
- (15) The World Athletics Championship has a special general resonance in the UK as the pre-eminent event devoted solely to athletics and involving UK participants at the highest level.
- (16) The Ryder Cup has a special general resonance in the UK as a major and unique international event involving UK players in top-level competition.
- (17) The (British) Open Golf Tournament has a special general resonance in the UK as the pre-eminent event in British golf, and one of the pre-eminent and the oldest events in world golf.
- (18) The listed events, including those to be considered as a whole and not as a series of individual events, have traditionally been broadcast on free television and have commanded large television audiences. Where, exceptionally, this has not been the case (the listed matches of the Cricket World Cup), the listing is limited (as it includes the final, semi-finals and matches involving national teams) and requires only adequate secondary coverage, and, in any case, fulfils two of the criteria considered to be reliable indicators of the importance of events for society (recital 13).

⁽¹⁾ The UK list was amended in 2001 following the change of name of this event from Five Nations Rugby Tournament to Six Nations Rugby Tournament.

- (19) The UK measures appear proportionate so as to justify a derogation from the fundamental EC Treaty freedom to provide services on the basis of an overriding reason of public interest, which is to ensure wide public access to broadcasts of events of major importance for society.
- (20) The UK measures are compatible with EC competition rules in that the definition of qualified broadcasters for the broadcasting of listed events is based on objective criteria that allow actual and potential competition for the acquisition of the rights to broadcast these events. In addition, the number of listed events is not disproportionate so as to distort competition on the downstream free television and pay television markets.
- (21) The proportionality of the UK measures is reinforced by the fact that a number of the events listed require adequate secondary coverage only.
- (22) After communication by the Commission to the other Member States of the UK measures and consultation of the Committee established pursuant to Article 23a of Directive 89/552/EEC, the Director-General for Education and Culture informed the UK, by letter of 28 July 2000, that the European Commission did not intend to object to the measures notified.
- (23) Those measures were published in the C Series of the *Official Journal of the European Communities*⁽¹⁾ in accordance with Article 3a(2) of Directive 89/552/EEC.
- (24) It follows from the judgment of the Court of First Instance in Case T-33/01, *Infront WM v Commission*, that the declaration that measures taken pursuant to Article 3a(1) of Directive 89/552/EEC are compatible with Community law constitutes a decision, which must therefore be adopted by the Commission.

Accordingly, it is necessary to declare by this Decision that the measures notified by the UK are compatible with Community law. The measures, as set out in the Annex to this Decision, should be published in the *Official Journal of the European Union* in accordance with Article 3a(2) of Directive 89/552/EEC.

- (25) In order to guarantee legal certainty, this Decision should apply as from the date of the first publication in the *Official Journal of the European Union* of the measures notified by the UK,

HAS DECIDED AS FOLLOWS:

Article 1

The measures taken pursuant to Article 3a(1) of Directive 89/552/EEC and notified by the United Kingdom to the Commission on 5 May 2000, as published in the *Official Journal of the European Communities* C 328 of 18 November 2000, are compatible with Community law.

Article 2

The measures, as set out in the Annex to this Decision, shall be published in the *Official Journal of the European Union* in accordance with Article 3a(2) of Directive 89/552/EEC.

Article 3

This Decision shall apply as from 18 November 2000.

Done at Brussels, 16 October 2007.

For the Commission
Viviane REDING
Member of the Commission

⁽¹⁾ OJ C 328, 18.11.2000, p. 2.

ANNEX

The measures taken by the UK to be published pursuant to Article 3a(2) of Directive 89/552/EEC are set out in the following extracts:

[Extracts from Part IV of the Broadcasting Act 1996]

BROADCASTING ACT 1996**Chapter 55**

PART IV

Sporting and other events of national interest*Listed events*

97. (1) For the purposes of this Part, a listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State for the purposes of this Part.
- (2) The Secretary of State shall not at any time draw up, revise or cease to maintain such a list as is mentioned in subsection 1 unless he has first consulted:
- (a) the BBC;
 - (b) the Welsh Authority;
 - (c) the Commission; and
 - (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired;
- and for the purposes of this subsection a relevant event is a sporting or other event of national interest which the Secretary of State proposes to include in, or omit from, the list.
- (3) As soon as he has drawn up or revised such a list as is mentioned in subsection 1, the Secretary of State shall publish the list in such manner as he considers appropriate for bringing it to the attention of:
- (a) the persons mentioned in subsection 2; and
 - (b) every person who is the holder of a licence granted by the Commission under Part I of the 1990 Act or a digital programme licence granted by them under Part I of this Act.
- (4) In this section 'national interest' includes interest within England, Scotland, Wales or Northern Ireland.
- (5) The addition of any relevant event to such a list as is mentioned in subsection 1 shall not affect:
- (a) the validity of any contract entered into before the date on which the Secretary of State consulted the persons mentioned in subsection 2 in relation to the proposed addition; or
 - (b) the exercise of any rights acquired under such a contract.
- (6) The list drawn up by the Secretary of State for the purposes of section 182 of the 1990 Act, as that list is in force immediately before the commencement of this section, shall be taken to have been drawn up for the purposes of this Part.

Categories of service

98. (1) For the purposes of this Part, television programme services shall be divided into two categories as follows:
- (a) such of the services specified in subsection 2 as are provided without any charge being made for the reception of programmes included in the service;
 - (b) all television programme services not for the time being falling within paragraph (a).

- (2) The services referred to in subsection 1(a) are:
- (a) regional and national Channel 3 services;
 - (b) Channel 4; and
 - (c) the television broadcasting services provided by the BBC.
- (3) The Secretary of State may by order amend subsection 2 so as to remove any service from, or add any service to, the services specified in it.
- (4) An order under subsection 3 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[...]

Restriction on televising of listed event

101. (1) A person providing a service falling within either of the categories set out in subsection 1 of section 98 (the first service) for reception in the United Kingdom or in any area of the United Kingdom shall not, without the previous consent of the Commission, include in that service live coverage of the whole or any part of a listed event unless:
- (a) another person, who is providing a service falling within the other category set out in that subsection (the second service), has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event; and
 - (b) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided.
- (2) The Commission may revoke any consent given by them under subsection 1.
- (3) Failure to comply with subsection 1 shall not affect the validity of any contract.
- (4) Subsection 1 shall not have effect where the television programme provider providing the first service is exercising rights acquired before the commencement of this section.

Power of Commission to impose penalty

102. (1) If the Commission:
- (a) are satisfied that the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has failed to comply with subsection 1 of section 101; and
 - (b) are not satisfied that in all the circumstances it would be unreasonable to expect him to have complied with that subsection;
- they may require him to pay, within a specified period, a specified financial penalty to the Commission.
- (2) If the Commission are satisfied that, in connection with an application for consent under subsection 1 of section 101, the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has:
- (a) provided them with information which was false in a material particular; or
 - (b) withheld any material information with the intention of causing the Commission to be misled;
- they may require him to pay, within a specified period, a specified financial penalty to the Commission.
- (3) The amount of any financial penalty imposed on any person under subsection 1 or 2 shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.
- (4) In subsection 3:
- (a) 'the relevant consideration' means an amount determined by the Commission as representing so much of any consideration paid by the person on whom the penalty is being imposed as is attributable to the acquisition of the rights to televise the event in question; and

- (b) 'the prescribed multiplier' means such number as the Secretary of State may from time to time by order prescribe.
- (5) An order under subsection 4(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Where the Commission receive any amount payable to them by virtue of subsection 1 or 2, that amount shall not form part of the revenues of the Commission but shall be paid into the Consolidated Fund.
- (7) Any amount payable by any person to the Commission by virtue of subsection 1 or 2 shall be recoverable by them as a debt due to them from that person.

Report to Secretary of State

103. (1) If the Commission:

- (a) are satisfied that a broadcasting body has failed to comply with subsection 1 of section 101; and
- (b) are not satisfied that in all the circumstances it would be unreasonable to expect the body to have complied with that subsection,

they shall make a report on the matter to the Secretary of State.

(2) If the Commission are satisfied that, in connection with an application for consent under subsection 1 of section 101, a broadcasting body has:

- (a) provided them with information which was false in a material particular: or
- (b) withheld any material information with the intention of causing the Commission to be misled,

they shall make a report on the matter to the Secretary of State.

(3) In this section 'broadcasting body' means the BBC or the Welsh Authority.

Code of guidance

104. (1) The Commission shall draw up, and may from time to time review, a code:

- (a) specifying the circumstances in which the televising of listed events generally, or of a particular listed event, is, or is not, to be treated as live for the purposes of this Part; and
- (b) giving guidance as to the matters which they will take into account in determining:
 - (i) whether to give or revoke their consent under section 101(1), or
 - (ii) for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1).

(2) In exercising their powers under this Part, the Commission shall have regard to the provisions of the code.

(3) Before drawing up or revising the code the Commission shall consult such persons as appear to the Commission to be appropriate.

(4) As soon as the Commission have drawn up or revised such a code, the Commission shall publish the code in such manner as they consider appropriate for bringing it to the attention of:

- (a) the BBC;
 - (b) the Welsh Authority;
 - (c) every person from whom the rights to televise a listed event may be acquired;
- and

(d) every person who is the holder of a licence granted by the Commission under Part I of the 1990 Act or a digital programme licence granted by them under Part I of this Act.

Interpretation of Part IV and supplementary provisions

105. (1) In this Part (unless the context otherwise requires):

‘Channel 4’ has the same meaning as in Part I of the 1990 Act;

‘the Commission’ means the Independent Television Commission;

‘listed event’ has the meaning given by section 97(1);

‘live’ shall be construed in accordance with the code drawn up under section 104;

‘national Channel 3 service’ and ‘regional Channel 3 service’ have the same meaning as in Part I of the 1990 Act;

‘television broadcasting service’ has the same meaning as in Part I of the 1990 Act;

‘television programme provider’ has the meaning given by section 99(2);

‘television programme service’ has the same meaning as in Part I of the 1990 Act.

(2) Section 182 of the 1990 Act (certain events not to be shown on pay-per-view terms) shall cease to have effect.

[Extracts from the Television Broadcasting Regulations 2000]

STATUTORY INSTRUMENTS**2000 No 54**

BROADCASTING

The Television Broadcasting Regulations 2000

Made: 14 January 2000

Laid before Parliament: 14 January 2000

Coming into force: 19 January 2000

Whereas the Secretary of State is a Minister designated ⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972 ⁽²⁾ with regard to measures relating to television broadcasting;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972 and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Television Broadcasting Regulations 2000

(2) These Regulations shall come into force on 19 January 2000.

[...]

Amendments of Broadcasting Act 1996

3. Part IV of the Broadcasting Act 1996 ⁽³⁾ (sporting and other events of national interest) is amended in accordance with the Schedule to these Regulations.

[...]

14 January 2000

Chris Smith

Secretary of State for Culture, Media and Sport

⁽¹⁾ S.I. 1997/1174.

⁽²⁾ 1972 c. 68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17 March 1993 (Cm 2183).

⁽³⁾ 1996 c. 55.

SCHEDULE

Regulation 3**Amendments of broadcasting act 1996: sporting and other events of national interest**

1. For section 98 there is substituted:

Categories of service

98. (1) For the purposes of this Part, television programme services and EEA satellite services shall be divided into two categories as follows:

(a) those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions, and

(b) all other television programme services and EEA satellite services.

(2) In this section, 'the qualifying conditions', in relation to a service, means the conditions:

(a) that the service is provided without any consideration being required for reception of the service, and

(b) that the service is received by at least 95 % of the population of the United Kingdom.

(3) There shall be disregarded for the purposes of subsection (2)(a) any fee payable in respect of a television licence, as defined by section 1(7) of the Wireless Telegraphy Act 1949.

(4) The condition in subsection (2)(b):

(a) is to be taken to be satisfied in relation to a regional Channel 3 service if it is satisfied in relation to Channel 3 as a whole, and

(b) is to be taken to be satisfied in relation to Channel 4 if it is satisfied in relation to Channel 4 and S4C taken together.

(5) The Commission shall from time to time publish a list of the television programme services and EEA satellite services which appear to them to satisfy the qualifying conditions.

(6) In this section, 'EEA satellite service' means any service which:

(a) consists in the transmission for general reception of television programmes by satellite, and

(b) is provided by a person who for the purposes of Council Directive 89/552/EEC is under the jurisdiction of an EEA State other than the United Kingdom.

[...]

3. In Section 101 (restriction on televising of listed event), in subsection (1), for 'person', in the first place where it occurs, there is substituted 'television programme provider'.

[...]

9. In section 105(1) (interpretation of Part IV):

(a) after the definition of 'the Commission' there is inserted: 'designated event, in relation to an EEA State other than the United Kingdom, has the meaning given by section 101A;';

(b) in the definition of 'live', before 'shall' there is inserted 'in relation to the televising of a listed event'; and

(c) after the definition of 'national Channel 3 service' and 'regional Channel 3 service' there is inserted: 'S4C has the same meaning as in Part I of the 1990 Act;'

[Extracts from the ITC Code on Sports and other Listed Events, revised January 2000]

Code on sports and other listed events

(revised January 2000)

Foreword

1. The Broadcasting Act 1996, (the 'Act') as amended by the Television Broadcasting Regulations 2000 (the 'Regulations'), requires the ITC to draw up, and from time to time review, a code giving guidance on certain matters relating to the televising of sports and other events of national interest which have been listed by the Secretary of State for Culture, Media and Sport. This code has been produced by the ITC, after consultation with broadcasters, sports bodies, the holders of sports rights and other interested parties, for the purpose of fulfilling this statutory duty, as defined under Section 104 of the Act. [...]
2. The Act restricts the acquisition by television programme providers of exclusive rights to the whole or any part of live television coverage of listed events and the broadcasting on an exclusive basis of such coverage without the previous consent of the ITC (see Part IV of the Act). Under the Act the ITC has powers to impose a financial penalty on its licensees if the restrictions on broadcasting live coverage of listed events have not been observed, if the ITC has been given false information or if material information has been withheld. In the case of the BBC and S4C the ITC must report the matter to the Secretary of State. The ITC will have regard to the provisions of the Code in exercising these powers.
3. 'Listed events' are drawn up by the Secretary of State in accordance with the Act, and the current list is at Appendix 1. The Secretary of State may add events to and delete events from the list at any time, but only after consultation with the BBC, the Welsh Authority, the ITC and the holder of the rights for the event in question. In June 1998 the Secretary of State extended the list to include Group B events on the understanding that they would be treated differently from Group A events. Group A events are those events which may not be covered live on an exclusive basis unless certain criteria are met. The criteria and matters to be taken into account by the ITC are set out at paragraphs 12 to 16. Group B events are those events that may not be broadcast live on an exclusive basis unless adequate provision has been made for secondary coverage. The minimum standard of secondary coverage the ITC will regard as adequate provision is set out at paragraphs 17 and 18.

[...]

General provision and background

6. For the purpose of the live broadcasting of listed events the Act defines two categories of television programme services: those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions (the first category) and all other television programme services and EEA satellite services (the second category). The qualifying conditions are defined as (a) that the service is provided without any consideration being required for reception for the service and (b) that the service is received by at least 95 % of the population of the United Kingdom. Television programme services and EEA satellite services which fall within the first category will appear in a list published from time to time by the ITC (see Appendix 2). These requirements are set out in the Act as amended by the Television Broadcasting Regulations 2000. Any contract for televising live coverage of a listed event which is entered into by a broadcaster must state that the rights are available for showing the event on a service falling within only one of the two categories, i.e., separate contracts must exist for each category. A broadcaster providing a service in either category (the first service) is prohibited from showing exclusively live coverage of the whole or any part of a Group A event without the previous consent of the Commission unless a broadcaster providing a service in the other category (the second service) has acquired the right to show live coverage of the event or the same part of the event. The area served by the second service must consist of or include the whole, or substantially the whole, of the area served by the first service. The first and second services may be provided by licensees in the same ownership, but between them they must include a broadcaster in each of the two categories described above.
7. The restrictions apply only to rights acquired either after the commencement of Section 101 of the 1996 Act, i.e. 1 October 1996 or after the Secretary of State began to consult rights holders about changes to the list, i.e. 25 November 1997, as shown in Appendix 1.
8. An event may be listed because it is of 'national' interest within England, Scotland, Wales or Northern Ireland separately. This is the basis on which the Scottish FA Cup Final, for example, has been listed. The Act allows for those events to be shown only in the relevant part of the United Kingdom in which there is likely to be most viewer interest. The reference to Channel 3 in Appendix 2, therefore, means individual or groups of regional Channel 3 services, or Channel 3 as a whole.

9. The Act is concerned with providing an opportunity for live coverage to be made available. It is important to emphasise that the Act does not require or guarantee live coverage of listed events, including coverage on Channel 3, Channel 4 and the BBC. Nor does the Act prohibit exclusive live coverage of listed events on these or other services subjects to the ITC being satisfied that certain criteria have been met (see paragraphs 12-18).
10. The specific guidance which the ITC is required to give is set out below. The ITC will keep this guidance under review and may amend it in the light of experience.

Definition of 'live'

11. Section 104 of the Act requires the ITC to specify the circumstances in which the coverage of listed events generally, or of a particular listed event, is, or is not, to be treated as live. In considering this matter the ITC has taken the view that the interests of viewers lie in allowing them to participate in the event as it happens, as far as possible. This suggests that live television coverage of most sports events, including those taking place in different time zones, should be defined as coverage which is simultaneous with the event (i.e. as the event is happening). However, given the different nature and length of events, no single definition is possible. The following interpretation should allow for necessary flexibility:
- the restrictions on live coverage will apply while the event concerned is in progress,
 - if the event involves separate games or matches, the restrictions will apply while each game or match is in progress,
 - in the case of a single event which is scheduled to last over several days the restrictions will apply to each day's play, while it is in progress,
 - in the case of an event which consists of defined separate parts which overlap in time (e.g. the Olympic Games or the FIFA World Cup Finals) and cannot therefore be televised simultaneously in full, the restrictions will apply to each match or competition as if it was a single event.

Matters to be taken into account in giving or revoking consent for exclusive coverage

12. Under Section 104(1)(b) of the Act the ITC is required to provide guidance as to the matters it will take into account in determining whether to grant its consent to a broadcaster providing a service in one category (the first service) to provide exclusive live coverage of an event (of part of an event) where no broadcaster providing a service in the other category (the second service) has acquired the same rights, or where the area for which the second service is to be provided does not consist of or include the whole, or substantially the whole, of the area for which the first service is provided.
13. In deciding whether to give its consent it may be sufficient for the ITC to establish that the availability of the rights was generally known and no broadcaster providing a service in the other category had expressed an interest in their acquisition to the rights holder, or had not bid for the rights. However, the ITC will wish to be satisfied that broadcasters have had a genuine opportunity to acquire the rights on fair and reasonable terms and, in reaching a view, will take account of some or all of the following criteria:
- any invitation to express interest, whether in the form of public advertisement or closed tender, in the acquisition of the rights must have been communicated openly and simultaneously to broadcasters providing services in both categories,
 - at the beginning of any negotiation the documentation and/or marketing literature must set out in all material respects the process for negotiating and acquiring the rights and all material terms and conditions, including what rights were available,
 - if the rights to the listed event were included in a package of rights, the package must not have been more attractive to broadcasters providing services in one of the two categories. Preferably, the rights should be capable of being purchased independently of other rights, e.g. to highlights, delayed transmissions, other events,
 - the conditions or costs attached to the acquisition of the rights (for example, production costs) must have been clearly stated and must not be preferential to one category of service,

- the price sought for the rights must have been fair, reasonable and non-discriminatory as between the two categories of programme service. What is a fair price will depend upon the rights being offered and the value of those rights to broadcasters. A wide range of prices is likely to be regarded as fair but when required to make its own judgment on the matter the ITC will have regard to, *inter alia*:
 - previous fees for the event or similar events,
 - time of day for live coverage of the event,
 - the revenue or audience potential associated with the live transmission of the event (e.g. the opportunity to sell advertising and sponsorship; the prospects for subscription income),
 - the period for which rights are offered, and
 - competition in the market place.
14. A genuine opportunity to acquire the rights also requires that broadcasters are given a reasonable time in which to do so. What constitutes a reasonable time will depend upon the circumstances of each case, including the complexity of negotiations and the production and transmission of the programme surrounding the event, and the proximity of the event to the date on which the rights are offered. The time allowed should give all parties a realistic opportunity to negotiate and reach agreement, but should not be unduly protracted, thereby preventing or restricting broadcasters from complying with this Code.
15. The ITC's consent is also required where the area for which the service is to be provided does not consist of or include the whole, or substantially the whole, of the area for which the other service is to be provided. In considering whether to give its consent the ITC will take account of the interests of the viewers in the different areas and the transmission coverage areas of the different broadcasters.
16. Consent will normally be given for the full period for which rights are acquired in recognition of the fact that the price paid will, *inter alia*, reflect the duration of the rights. However, the ITC will revoke its consent if the broadcaster to whom the consent has been given requests it, or if the consent has been given on the basis of false or misleading information. Additionally, the ITC will consider revoking its consent if it appears that rights have been acquired for an extended period in order to circumvent the spirit of the Act. In determining what is an extended period the ITC will have regard to precedents for this and similar events, including the periods for which rights are granted to non-United Kingdom broadcasters for overseas transmissions.
17. For those events listed in Group B in Appendix 1, the ITC will give its consent to exclusive live coverage of an event by a broadcaster providing a service in one category (the first service) if adequate provision has been made for secondary coverage by a broadcaster providing a service in the other category (the second service). The minimum which the ITC will consider to be adequate is where the second service has acquired rights for the provision of edited highlights or delayed coverage amounting to at least 10 % of the scheduled duration of the event (or the play in the event taking place on any on day), subject to a minimum of 30 minutes for an event (or the play in the event on any day) lasting an hour or more, whichever is the greater. For these purposes, where an event has a number of different components taking place concurrently the scheduled duration of the event is defined as the time elapsed between the scheduled beginning of the first component of the event on that day. The second service must have editorial control over the content and scheduling of the edited highlights or delayed coverage except that a restriction may be imposed that the second service shall not begin broadcasting the edited highlights or delayed coverage until a period has elapsed following the scheduled conclusion of the event (or the play in the event on any day). The maximum period which may be set is follows:

| For an event scheduled to finish | Maximum delay |
|----------------------------------|---|
| After midnight and up to 8 am | Edited highlights or delayed coverage to start not later than 10.00 am. |
| Between 8.00 am and 8.30 pm | Up to 2 hours. |
| Between 8.30 pm and 10.00 pm | Edited highlights or delayed coverage to start not later than 10.30 pm. |
| Between 10.00 pm and midnight | Up to 30 minutes. |

18. In addition to the above, the right to provide live radio commentary on the event must have been acquired by a radio station with national coverage or an organisation providing a sports service to radio stations which form a national (or near national) network.
19. The situation may arise where a second service is unable or unwilling to provide adequate secondary coverage or any secondary coverage at all. The ITC will then consider whether to give its consent to exclusive live coverage without secondary coverage and the same or similar criteria as set out in paragraphs 12 to 16 will apply.

Circumstances in which sanctions might not be imposed

20. Section 104 also requires the ITC to give guidance on the matters which it will take into account in deciding whether it is unreasonable to expect a television programme provider to comply with the restrictions on broadcasting live coverage of listed events and therefore whether sanctions should be imposed if the restrictions are not observed. Given the long lead times which are generally available for offering, selling and acquiring the rights, the ITC believes that there are very few circumstances in which it would be reasonable for a broadcaster to proceed with exclusive coverage without the ITC's consent. A broadcaster who proceeds to broadcast a listed event live without the ITC's consent and where this is not in compliance with Section 101(1) will need to convince the ITC that the period between the rights becoming available and the event taking place was too short for this consent to be obtained or that he believed he had complied but that belief was based on false information. In the latter situation, however, the ITC will need to be convinced that the broadcaster had taken all reasonable steps to satisfy himself that another broadcaster providing a service in the other category had acquired the rights.

Procedures for seeking consent

21. A request for the ITC's consent for exclusive live coverage of a listed event must be made in writing to the ITC's Secretary and be accompanied by full reasons and justification for the request and all relevant supporting information. Requests should be made well in advance (wherever possible, no less than three months) of the event taking place to give the ITC sufficient time to consider whether consent should be given. As a first step in considering the request the ITC will normally issue a public notice inviting any broadcasters providing a service in the other category from the one to which the applicant belongs, or rights holders and other interested parties to comment on the request. Depending on the response and on the ITC's own investigations into the matter, the applicant may be asked to supply additional information in writing and/or to attend a meeting with ITC staff.
22. Broadcasters should note that under the Act ITC consent is needed for exclusive live coverage of Group B events even if the minimum requirements set out in paragraphs 17 and 18 are met. However, in these circumstances consent will be given automatically.
23. The ITC will respond as quickly as possible to any request. The ITC will publish its decisions and its reasons, but, in doing so, will have regard to the legitimate interest of the parties in the protection of confidentiality.

[...]

January 2000

APPENDIX 1

UK listed sporting events

Group A

The Olympic Games

The FIFA World Cup Finals Tournament

The FA Cup Final

The Scottish FA Cup final (in Scotland)

The Grand National

The Derby

The Wimbledon Tennis finals

The European Football Championship finals Tournament

The Rugby League Challenge Cup final (*)

The Rugby World Cup final (*)

Group B

Cricket Test matches played in England

Non-finals play in the Wimbledon Tournament

All other matches in the Rugby World Cup Finals Tournament (*)

Five Nations Rugby Tournament matches involving home countries ⁽¹⁾ (*)

The Commonwealth Games (*)

The World Athletics Championship (*)

The Cricket World Cup — the final, semi-finals and matches involving home nations' teams (*)

The Ryder Cup (*)

The Open Golf Championship (*)

Note:

Restrictions apply to rights acquired after 1 October 1996 except for those events marked by an asterisk where the relevant date is 25 November 1997 ⁽²⁾.

APPENDIX 2**List of services meeting the 'qualifying conditions' as set out in the television regulations 2000**

CHANNEL 3 (ITV)

CHANNEL 4

BBC 1

BBC 2

[Written answer from the Secretary of State to a Parliamentary Question of Hugh Bayley MP, 25 November 1997]

Culture, media and sport*Sports broadcasting*

Mr Bayley: To ask the Secretary of State for Culture, Media and Sport what progress he has made in his review of the sports events listed under Part IV of the Broadcasting Act 1996; and if he will make a statement.

Mr Chris Smith: I have consulted interested parties about the principles which should guide the listing process, and I am today publishing criteria which I hope will make the process more transparent. I have also appointed an advisory group of individuals with knowledge of the sporting, broadcasting and public policy issues involved. The members of the group are:

Lord Gordon of Strathblane (chairman)

Mr Alastair Burt

Mr Jack Charlton

Mr Steve Cram

Kate Hoey, MP

Mr Michael Parkinson

⁽¹⁾ The present annex reproduces the extracts from the ITC Code as notified by the UK to the Commission on 5 May 2000. However, the UK list was amended in 2001 following the change of name of this event to the Six Nations Rugby Tournament.

⁽²⁾ Following the change of name to Six Nations Rugby Tournament, the relevant date for this event is 24 January 2001.

Mr Clive Sherling

Prof. David Wallace

I have invited this group to consider the issues against these published criteria:

- (a) whether events or parts of events should be removed from the list; and
- (b) whether other major sporting events should be added to the list.

As an initial step in the process of reviewing the list, the rights holders for the events currently listed and a number of the other major sports events are being formally consulted, as the 1996 Act requires. The submissions received from them will be made available to the advisory group.

The rights holders for the following events are to be consulted:

Events currently listed:

The Olympic Games

The FIFA World Cup finals

The FA Cup final

The Scottish FA Cup final (listed only in Scotland)

Cricket Test Matches involving England

Wimbledon Tennis Tournament (finals weekend only currently listed)

The Grand National

The Derby

Other major sports events:

The Cricket World Cup

The Rugby World Cup

The European Football Championships

The Commonwealth Games

The World Athletics Championship

The British Grand Prix

The Five Nations Rugby Tournament

The Open (golf)

The Ryder Cup

The group may request that other events be included in the review and the rights holders for these events will be consulted.

The group will begin its work immediately and I expect it to make its recommendations to me before Easter. I shall then decide what changes, if any, to make to the current list.

[Extracts from a communication by the Ministry for Culture, Media and Sports, 25 November 1997]

[...]

3. The criteria to be used by the review group in their considerations are as follows:

Notes for guidance on the listing of major sports events

In considering whether to list an event, the Secretary of State is required to consult the broadcasting regulators and the holders of the rights in question. The following note sets out the factors which the Secretary of State will take into account in deciding whether to list an event.

In order to be eligible to be listed, an event must meet the following main criterion:

- the event has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned; it is an event which serves to unite the nation; a shared point in the national calendar.

Such an event is likely to fall into one or both of the following categories:

- it is a pre-eminent national or international event in the sport,
- it involves the national team or national representatives in the sport concerned.

An event which satisfies the essential criterion is likely to be considered for listing, but listing of such an event is not automatic. It is more likely to be listed if it exhibits particular characteristics making listing an apt response, such as:

- it is likely to command a large television audience,
- it has a history of being broadcast live on free-to-air services.

In considering whether to list such an event, the Secretary of State will have regard to other factors affecting the likely costs and benefits to the sport concerned, to the broadcasting industry and to viewers, such as:

- whether it is practical to offer full live coverage on a general channel — extended events such as season-long championships involving many matches will not normally be listed in their entirety,
- the impact of listing in reducing the income or potential income of the sport, and the consequences of that reduction for its investment in increasing participation and/or improving levels of performance and/or in creating safe facilities,
- the likely impact of listing on the broadcasting market, including future investment in sports broadcasting, the level of competition and the position of public service broadcasters,
- whether there are arrangements to ensure that access to the event is available to all viewers by means of highlights, delayed coverage and/or radio commentary.

In considering events for listing, the Secretary of State will have regard to these other factors cumulatively. No single factor automatically commands listing as a response, nor does failure to meet an individual criterion disqualify an event from consideration.

4. The Secretary of State made his announcement in a Written Answer to a Parliamentary Question from Hugh Bayley MP (City of York).

[Written answer from the Secretary of State to a Parliamentary Question of Gareth R. Thomas MP, 25 June 1998]

Culture, media and sport

Listed sporting events

Mr Gareth R. Thomas: To ask the Secretary of State for Culture, Media and Sport if he will make a statement about the outcome of his review of major events listed under Part IV of the Broadcasting Act 1996.

Mr Chris Smith: My review of the list is now complete. I have conducted it in the light of the criteria which I published last year. I consulted widely on the criteria and the content of the list and I have carefully considered the many representations made to me. I have accepted the general principles of the report produced by the Advisory Group chaired by Lord Gordon of Strathblane.

With immediate effect, I am revising the list of events under Part IV of the Broadcasting Act 1996.

I am retaining the following events on the list, requiring live coverage to be made available to free-to-air terrestrial television broadcasters (in Category A as specified in the 1996 Act):

The Olympic Games

The FIFA World Cup Finals Tournament

The FA Cup final

The Scottish FA Cup final (in Scotland)

The Grand National

The Derby

The Wimbledon Tennis finals.

I am adding the following events to the list on the same basis:

The European Football Championship Finals Tournament

The Rugby League Challenge Cup final

The Rugby World Cup final.

After careful consideration of the Advisory Group's recommendations, I have concluded that a number of the matches in the World Cup and European Championships football qualifying tournaments meet the criteria for listing. I believe that it is important that crucial ties in these competitions should be available to all viewers and therefore intend to seek Europe-wide arrangements for protecting free-to-air live broadcasts of crucial matches in these competitions.

I am also listing some further events on a different understanding. For these events, I have recommended to the Independent Television Commission that live coverage might be allowed to be shown exclusively by a Category B broadcaster (as specified in the 1996 Act), provided there are satisfactory arrangements for secondary coverage by a Category A broadcaster. I have asked the ITC to consider setting a minimum acceptable standard for such secondary coverage, to include some combination of delayed full coverage, highlights and live radio commentary.

The events I am listing on this understanding are:

Cricket Test Matches played in England

Non-finals play in the Wimbledon Tournament

All other matches in the Rugby World Cup Finals Tournament

Five Nations Rugby Tournament matches involving home countries

The Commonwealth Games

The World Athletics Championship

The Cricket World Cup — the final, semi-finals and matches involving home nations teams

The Ryder Cup

The Open Golf Championship.
