



# Broadcasting Act 1990

## 1990 CHAPTER 42

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

#### INDEPENDENT TELEVISION SERVICES

##### Textual Amendments

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

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

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

### CHAPTER 1

#### REGULATION BY COMMISSION OF TELEVISION SERVICES GENERALLY

##### *Establishment of Independent Television Commission*

### <sup>F2</sup>1 The Independent Television Commission.

##### Textual Amendments

- F2** S. 1 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

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### *Function of Commission*

## **F<sup>3</sup>2 Regulation by Commission of provision of television services.**

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#### **Textual Amendments**

**F3** S. 2 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### *General provisions about licences*

## **3 Licences under Part I.**

(1) Any licence granted by [<sup>F4</sup>OFCOM] under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of [<sup>F5</sup> Chapter 2 or 5 of this Part or section 235 of the Communications Act 2003].

(2) A licence may be so granted for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified.

(3) [<sup>F4</sup>OFCOM] —

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

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

[<sup>F6</sup>(3A) Where [<sup>F4</sup>OFCOM] are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.]

(4) [<sup>F4</sup>OFCOM] may vary a licence by a notice served on the licence holder if—

- (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
- (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to [<sup>F4</sup>OFCOM] about the variation.

(5) Paragraph (a) of subsection (4) does not affect the operation of section 41(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 19(1) or 52(1) or in pursuance of any other provision of this Part which applies section 19(1).

(6) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of [<sup>F4</sup>OFCOM] .

(7) Without prejudice to the generality of subsection (6), [<sup>F4</sup>OFCOM] shall not give their consent for the purposes of that subsection unless they are satisfied that any such other

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person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.

- [<sup>F7</sup>(8) The holding by a person of a licence under this Part shall not relieve him of—
- (a) any liability in respect of a failure to hold [<sup>F8</sup>a licence under section 8 of the Wireless Telegraphy Act 2006]; or
  - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).]

#### Textual Amendments

- F4** Words in s. 3 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 1\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F5** Words in s. 3(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 1\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F6** S. 3(3A) inserted (24.7.1996) by [1996 c. 55, ss. 136, 149\(1\)\(f\), Sch. 8 para. 1](#)
- F7** S. 3(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 1\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F8** Words in s. 3(8)(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 10](#)

#### 4 General licence conditions.

- (1) A licence may include—
- (a) such conditions as appear to [<sup>F9</sup>OFCOM] to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act [<sup>F10</sup>, the Broadcasting Act 1996 or the Communications Act 2003];
  - (b) conditions requiring the payment by the licence holder to [<sup>F9</sup>OFCOM] (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
  - (c) conditions requiring the licence holder to provide [<sup>F9</sup>OFCOM], in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under this Act [<sup>F11</sup>, the Broadcasting Act 1996 or the Communications Act 2003];
  - (d) conditions providing for such incidental and supplemental matters as appear to [<sup>F9</sup>OFCOM] to be appropriate.
- (2) A licence may in particular include conditions requiring the licence holder—
- (a) to comply with any direction given by [<sup>F9</sup>OFCOM] as to such matters as are specified in the licence or are of a description so specified; or
  - (b) (except to the extent that [<sup>F9</sup>OFCOM] consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified.
- (3) The fees required to be paid to [<sup>F9</sup>OFCOM] by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by [<sup>F9</sup>OFCOM]; <sup>F12</sup>....

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- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and [F9OFCOM] shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
- (a) is required by virtue of any condition [F13contained in the licence] to provide [F9OFCOM] with any information, and
  - (b) in purported compliance with that condition provides them with information which is false in a material particular,
- he shall be taken for the purposes of sections 41 and 42 [F14or (as the case may be) sections 237 and 238 of the Communications Act 2003 (enforcement of television licensable content service licences)] to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

#### Textual Amendments

- F9** Words in s. 4 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 2\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F10** Words in s. 4(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 2\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F11** Words in s. 4(1)(c) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 2\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F12** Words in s. 4(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 2\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F13** Words in s. 4(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 2\(5\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F14** Words in s. 4(5) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 2\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C2** [S. 4\(1\)\(c\)](#) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), arts. 1, 10\(1\)\(a\)\(2\)\(a\)](#) (with art. 5)

## 5 Restrictions on the holding of licences.

- (1) [F15OFCOM] shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - [F16(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) [F15OFCOM] may accordingly—

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- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
  - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
  - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
- (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
- (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
- (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
  - (i) shareholdings in the body, or
  - (ii) the directors of the body,where such proposals are known to the body;
- [<sup>F17</sup>(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
  - (i) shareholdings in the body; or
  - (ii) the directors of the body;
- (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
  - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.

[<sup>F18</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, [<sup>F15</sup>OFCOM] shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]

(3) Where [<sup>F15</sup>OFCOM] —

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

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

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- (4) Those provisions shall not so have effect if <sup>F15</sup>[OFCOM] decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as <sup>F15</sup>[OFCOM] consider necessary or expedient to ensure that where—
  - (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,<sup>F15</sup>[OFCOM] may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.
- <sup>F19</sup>(6) <sup>F15</sup>[OFCOM] shall not serve any such notice on the licence holder unless—
  - (a) <sup>F15</sup>[OFCOM] have notified him of the matters <sup>F20</sup>[constituting their grounds for revoking the licence] and given him a reasonable opportunity of making representations to them about those matters, and
  - (b) in a case where the relevant change is one falling within subsection (6A)—
    - (i) they have also given him an opportunity of complying with <sup>F21</sup>[the requirements imposed by or under Schedule 14 to the Communications Act 2003,] within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.
- (6A) A relevant change falls within this subsection if it consists only in one or more of the following—
  - <sup>F22</sup>(a) .....
  - (b) a change in the national market share (within the meaning of <sup>F23</sup>[Part 1 of Schedule 14 to the Communications Act 2003] ) of one or more national newspapers (within the meaning of that Part of that Schedule);
  - (c) a change in the local market share <sup>F24</sup>... in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).]
- <sup>F25</sup>(6AA) For the purposes of this section, the local market share of a local newspaper in any area at any time is the percentage of the total number of copies of all local newspapers sold in that area in the relevant six months which is represented by the total number of copies of that newspaper sold in that area in that six months.
- (6AB) In subsection (6AA) “the relevant six months” means the six months ending with the last whole calendar month to end before the time in question.
- (6AC) For the purposes of subsection (6AA), the number of copies of a newspaper sold in a particular area during any period may be taken to be such number as is estimated by OFCOM—
  - (a) in such manner, or
  - (b) by reference to such statistics prepared by any other person,
 as they think fit.
- (6AD) In relation to a newspaper which is distributed free of charge (rather than sold), references in this section to the number of copies sold include references to the number of copies distributed.]
- <sup>F26</sup>(6B) .....

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[<sup>F27</sup>(6C) [<sup>F15</sup>OFCOM] shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change..

<sup>F27</sup>(6D) Where [<sup>F15</sup>OFCOM] receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.]

(7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—

- (a) any change affecting the nature or characteristics of the body, or
- (b) any change in the persons having control over or interests in the body, [<sup>F28</sup>or
- (c) any other change giving rise to [<sup>F29</sup>a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003]]

being [<sup>F30</sup>(in any case)] a change which is such that, if it fell to [<sup>F15</sup>OFCOM] to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

#### Textual Amendments

- F15** Words in s. 5 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F16** S. 5(1)(b)(c) substituted for s. 5(1)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 350\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F17** S. 5(2)(da)(db) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F18** S. 5(2A) inserted (24.7.1996) by [1996 c. 55, ss. 136, 149\(1\), Sch. 8 para. 2\(2\)](#)
- F19** S. 5(6)(6A)(6B) substituted for s. 5(6) (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 12\(2\)](#); [S.I. 1996/2120, art. 5, Sch. 2](#)
- F20** Words in s. 5(6)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F21** Words in s. 5(6)(b)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F22** S. 5(6A)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(5\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F23** Words in s. 5(6A)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F24** Words in s. 5(6A)(c) omitted (15.6.2011) by virtue of [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 11\(2\)](#)
- F25** S. 5(6AA)-(6AD) inserted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 11\(3\)](#)
- F26** S. 5(6B) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(6\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F27** S. 5(6C)(6D) inserted (24.7.1996) by [1996 c. 55, ss. 136, 149\(1\), Sch. 8 para. 2\(3\)](#)
- F28** S. 5(7)(c) and the word “or” immediately preceding it inserted (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 12\(3\)\(a\)](#); [S.I. 1996/2120, art. 5, Sch. 2](#)
- F29** Words in s. 5(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 3\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F30** Words in s. 5(7) substituted (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 12\(3\)\(b\)](#); [S.I. 1996/2120, art. 5, Sch. 2](#)

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

- C3 S. 5 modified (temp.) (17.7.2003) by [The Communications Act 2003 \(Commencement No. 1\) Order 2003 \(S.I. 2003/1900\)](#), [art. 5](#)
- C4 S. 5(1) modified (1.11.1996) by [1996 c. 55, s. 143\(1\)\(2\)](#); [S.I. 1996/2120](#), [art. 5](#), [Sch. 2](#)
- C5 S. 5(1)(a) amended (1.11.1996) by [1996 c. 55, s. 145\(7\)](#); [S.I. 1996/2120](#), [art. 5](#), [Sch. 2](#)

*General provisions about licensed services*

**F316 General requirements as to licensed services.**

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**Textual Amendments**

- F31 Ss. 6-12 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), [Sch. 15 para. 4](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F317 General code for programmes.**

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**Textual Amendments**

- F31 Ss. 6-12 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), [Sch. 15 para. 4](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F318 General provisions as to advertisements.**

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**Textual Amendments**

- F31 Ss. 6-12 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), [Sch. 15 para. 4](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F319 Control of advertisements.**

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**Textual Amendments**

- F31 Ss. 6-12 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), [Sch. 15 para. 4](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F3110 Government control over licensed services.**

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**Textual Amendments**

**F31** Ss. 6-12 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 15 para. 4, [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), Sch. 1 (with art. 11)

**F31 11 Monitoring by Commission of programmes included in licensed services.**

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**Textual Amendments**

**F31** Ss. 6-12 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 15 para. 4, [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), Sch. 1 (with art. 11)

**F31 12 Audience research.**

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**Textual Amendments**

**F31** Ss. 6-12 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 15 para. 4, [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), Sch. 1 (with art. 11)

*Prohibition on providing unlicensed television services*

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

(1) Subject to subsection (2), any person who provides any [<sup>F32</sup>relevant regulated television service] without being authorised to do so by or under a licence under this Part [<sup>F33</sup>or Part I of the Broadcasting Act 1996] shall be guilty of an offence.

[<sup>F34</sup>(1A) In subsection (1) “relevant regulated television service” means a service falling, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM, other than a television multiplex service.]

(2) The Secretary of State may, after consultation with [<sup>F35</sup>OFCOM] , by order provide that subsection (1) shall not apply to such services or descriptions of services as are specified in the order.

(3) A person guilty of an offence under this section shall be liable—  
(a) on summary conviction, to a fine not exceeding the statutory maximum;  
(b) on conviction on indictment, to a fine.

(4) No proceedings in respect of an offence under this section shall be instituted—  
(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;  
(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

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*Changes to legislation: Broadcasting Act 1990 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Without prejudice to subsection (3), compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F32** Words in s. 13(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 5\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F33** words in s. 13(1) inserted (1.10.1996) by [1996 c. 55, s. 148\(1\), Sch. 10 Pt. I para. 2\(1\)\(b\)](#); [S.I. 1996/2120, art. 4, Sch. 1](#)
- F34** S. 13(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 5\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F35** Words in s. 13(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 5\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C6** S. 13 excluded (temp. until 11.10.1997) by [S.I. 1997/1682, regs. 1, 4\(3\)](#)
- C7** S. 13(1) excluded by [S.I. 1990/2537, art. 2\(1\)](#)  
 S. 13(1) excluded (5.1.1995) by [S.I. 1995/3172, art. 2](#)

## CHAPTER II

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

#### Channel 3

#### 14 Establishment of Channel 3.

- (1) [<sup>F36</sup>OFCOM] shall do all that they can to secure the provision, in accordance with this Chapter, of a nationwide system of television broadcasting services to be known as Channel 3.
- (2) Subject to subsection (5), Channel 3 shall be structured on a regional basis, with each of the services comprised within it (“Channel 3 services”) being provided for such area in the United Kingdom as [<sup>F36</sup>OFCOM] may determine in the case of that service.
- (3) If it appears to [<sup>F36</sup>OFCOM] that it would be appropriate for a particular Channel 3 service to do so, they may determine that the service shall include the provision of different programmes—
  - (a) for such different parts of the area for which it is provided, or
  - (b) for such different communities living within that area,
 as they may determine.
- (4) If [<sup>F36</sup>OFCOM] so determine in the case of a particular Channel 3 service, that service shall be provided for a particular area only between such times of the day or on such days of the week (or both) as [<sup>F36</sup>OFCOM] may determine.

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*Changes to legislation:* Broadcasting Act 1990 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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(5) If [<sup>F36</sup>OFCOM] so determine, a Channel 3 service may be provided for two or more areas for which regional Channel 3 services are provided, but any such service may only be so provided between particular times of the day.

(6) In this Part—

“regional Channel 3 service” means a Channel 3 service provided for a particular area determined under subsection (2); and

“national Channel 3 service” means a Channel 3 service provided as mentioned in subsection (5).

<sup>F37</sup>(7) .....

[<sup>F38</sup>(7A) The areas mentioned in subsection (2) must at all times include at least one area that comprises, or falls entirely within, Scotland.]

(8) In this section and section 15 “programme” does not include an advertisement.

#### Textual Amendments

**F36** Words in s. 14 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 6](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F37** [S. 14\(7\)](#) repealed (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 24(1)(a), 47(1), [Sch. 2](#)

**F38** [S. 14\(7A\)](#) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. [24\(1\)\(b\)](#), 47(1)

## 15 Applications for Channel 3 licences.

(1) Where [<sup>F39</sup>OFCOM] propose to grant a licence to provide a Channel 3 service they shall publish, in such manner as they consider appropriate, a notice—

- (a) stating that they propose to grant such a licence;
- (b) specifying—
  - (i) if the service is to be a regional Channel 3 service, the area in the United Kingdom for which the service is to be provided,
  - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), the different parts of that area, or (as the case may be) the different communities living within it, for which such programmes are to be provided,
  - (iii) if the service is to be provided as mentioned in section 14(4), the times of the day or the days of the week (or both) between or on which it is to be provided, and
  - (iv) if the service is to be a national Channel 3 service, the areas in the United Kingdom for which it is to be provided and the times of the day between which it is to be provided;
- (c) inviting applications for the licence and specifying the closing date for such applications; and
- (d) specifying—
  - (i) the fee payable on any application made in pursuance of the notice, and
  - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 19(1)(c) if he were granted the licence.

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- (2) [F39]OFCOM] shall, when publishing a notice under subsection (1), publish with the notice general guidance to applicants for the licence in question which contains examples of the kinds of programme whose inclusion in the service proposed by any such applicant under subsection (3)(b) would be likely to result in a finding by [F39]OFCOM] that the service would comply with the requirements [F40]that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
  - (a) the public service remit for that service,
  - (b) programming quotas,
  - (c) news and current affairs programmes, and
  - (d) programme production and regional programming.]
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
  - (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) the applicant’s proposals for providing a service that would comply with the requirements [F41]that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
    - (i) the public service remit for that service,
    - (ii) programming quotas,
    - (iii) news and current affairs programmes, and
    - (iv) programme production and regional programming]
  - [F42](c) .....
  - [F42](d) .....
  - [F42](e) .....
  - (f) the applicant’s cash bid in respect of the licence;
  - (g) such information as [F39]OFCOM] may reasonably require as to the applicant’s present financial position and his projected financial position during the period for which the licence would be in force; and
  - (h) such other information as [F39]OFCOM] may reasonably require for the purpose of considering the application.
- [F43](3A) For the purposes of subsection (1)(d)(ii)—
  - (a) different percentages may be specified for different accounting periods; and
  - (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (4) At any time after receiving such an application and before determining it [F39]OFCOM] may require the applicant to furnish additional information under any of [F44]paragraphs (b)], (g) and (h) of subsection (3).
- (5) Any information to be furnished to [F39]OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [F39]OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,

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- (ii) the proposals submitted by him under subsection (3)(b), and
  - (iii) such other information connected with his application as [F39]OFCOM] consider appropriate; and
- (b) a notice—
- (i) inviting representations to be made to them with respect to any matters published by them in accordance with paragraph (a) (ii) and (iii) above, and
  - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.
- (7) In this Part “cash bid”, in relation to a licence, means an offer to pay to [F39]OFCOM] a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

#### Textual Amendments

- F39** Words in s. 15 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 7\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F40** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 7\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F41** Words in s. 15(3)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 7\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F42** S. 15(3)(c)-(e) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 7\(4\)\(b\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F43** S. 15(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 7\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F44** Words in s. 15(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 7\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C8** Ss. 15-17A excluded (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 215\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- (1) Where a person has made an application for a Channel 3 licence in accordance with section 15, [F45]OFCOM] shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 17 unless it appears to them—
- (a) that his proposed service would comply with the requirements [F46]that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
    - (i) the public service remit for that service,
    - (ii) programming quotas,
    - (iii) news and current affairs programmes, and
    - (iv) programme production and regional programming], and

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(b) that he would be able to maintain that service throughout the period for which the licence would be in force,

and any reference to an applicant in section 17 (except in section 17(12)(b)) is accordingly a reference to an applicant in whose case it appears to [F45OFCOM] that the requirements of paragraphs (a) and (b) above are satisfied.

F47(2) .....

F47(3) .....

(4) In deciding whether an applicant’s proposed service would comply with the requirements [F48] that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—

- (a) the public service remit for that service,
- (b) programming quotas,
- (c) news and current affairs programmes, and
- (d) programme production and regional programming,]

[F45OFCOM] shall take into account any representations made to them in pursuance of section 15(6)(b) with respect to that service; F49 ....

F50(5) .....

F50(6) .....

F50(7) .....

F50(8) .....

**Textual Amendments**

- F45** Words in s. 16 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 8(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F46** Words in s. 16(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 8(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F47** S. 16(2)(3) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 8(4), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F48** Words in s. 16(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 8(5)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F49** Words in s. 16(4) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 8(5)(b), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F50** S. 16(5)-(8) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 8(6), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C8** Ss. 15-17A excluded (29.12.2003) by Communications Act 2003 (c. 21), **ss. 215(3), 411(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

(1) Subject to the following provisions of this section, [F51OFCOM] shall, after considering all the cash bids submitted by the applicants for a Channel 3 licence, award the licence to the applicant who submitted the highest bid.

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- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) [F51OFCOM] shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) [F51OFCOM] may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.
- (4) Without prejudice to the generality of subsection (3), [F51OFCOM] may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to [F51OFCOM] —
  - (a) that the quality of the service proposed by such an applicant is exceptionally high; and
  - (b) that the quality of that proposed service is substantially higher than the quality of the service proposed—
    - (i) by the applicant who has submitted the highest bid, or
    - (ii) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids;and where it appears to [F51OFCOM] , in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (5) If it appears to [F51OFCOM] , in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
  - (a) they shall refer his application to the Secretary of State, together with—
    - (i) a copy of all documents submitted to them by the applicant, and
    - (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
  - (a) paying any amounts payable by him by virtue of section 19(1), or
  - (b) otherwise financing the provision of his proposed service.

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- (8) In a case where any requirement such as is mentioned in section 5(1)(b) operates to preclude [F51OFCOM] from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases; and any such rules may provide for the awarding of licences by reference to orders of preference notified to [F51OFCOM] by applicants at the time of making their applications.
- (9) Any such rules shall be published by [F51OFCOM] in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.
- (10) Where [F51OFCOM] are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (14)) have effect as if that person had not made an application for the licence.
- (11) Where [F51OFCOM] have awarded a Channel 3 licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (12) The matters referred to in subsection (11)(a) are—
- (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to [F51OFCOM] that his proposed service would comply with the requirements [F52] that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
    - (i) the public service remit for that service,
    - (ii) programming quotas,
    - (iii) news and current affairs programmes, and
    - (iv) programme production and regional programming];
    - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, [F51OFCOM]’s reasons for the licence having been so awarded; and
    - (d) such other information as [F51OFCOM] consider appropriate.
- (13) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if—
- (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (14) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if [F51OFCOM] decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not



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made an application for it, this section shall not so have effect if [<sup>F51</sup>OFCOM] decide that it would be desirable to publish a further notice under this Part in respect of the grant of a further licence to provide the service in question.

#### Textual Amendments

- F51** Words in s. 17 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 9\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F52** Words in s. 17(12)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 9\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- C8** Ss. 15-17A excluded (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 215\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- C9** S. 17 applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 5\(4\)\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- C10** S. 17(5)-(7) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 222\(5\), 411\(2\)](#) (with [s. 222\(11\), Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- C11** S. 17(5)-(7) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 216\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

#### [<sup>F53</sup>17A Award of Channel 3 licence subject to conditions.

- (1) [<sup>F54</sup>OFCOM] may, when awarding a Channel 3 licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
- any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and
  - any information provided to them under section 15(3)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where [<sup>F54</sup>OFCOM] determine that any condition imposed by them in relation to a Channel 3 licence in pursuance of subsection (1) has not been satisfied, section 17 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 17 shall not so have effect if [<sup>F54</sup>OFCOM] decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence.]

#### Textual Amendments

- F53** S. 17A inserted (1.10.1996) by [1996 c. 55, s. 86\(1\)](#); [S.I. 1996/2120, art. 4, Sch. 1](#)
- F54** Words in ss. 17A-19 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 10](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- C8** Ss. 15-17A excluded (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 215\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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**C12** S. 17A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 5\(4\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) If at any time after a Channel 3 licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to [<sup>F54</sup>OFCOM] that he does not intend to provide the service in question, or
  - (b) [<sup>F54</sup>OFCOM] for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,
- then, subject to subsection (2)—
- (i) [<sup>F54</sup>OFCOM] shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 17 shall (subject to section 17(14)) have effect as if he had not made an application for the licence.
- (2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless [<sup>F54</sup>OFCOM] have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where [<sup>F54</sup>OFCOM] revoke a Channel 3 licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, [<sup>F55</sup>a specified financial penalty].
- [<sup>F56</sup>(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).
- (3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
  - (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
- (3C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
  - (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.
- (3D) Section 19(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.]
- (5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 68(5), be recoverable by [<sup>F54</sup>OFCOM] as a debt due to them from any person who controls that body.

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#### Textual Amendments

- F54** Words in ss. 17A-19 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 10](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F55** Words in s. 18(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 2\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F56** S. 18(3A)-(3D) substituted for 18(4) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 2\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C13** S. 18(3B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C14** S. 18(3C)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C15** S. 18(3) modified (1.11.1996) by 1996 c. 55, s. [145\(6\)\(a\)](#); [S.I. 1996/2120](#), art. 4, [Sch. 1](#); [S.I. 1996/2120](#), art. 5, [Sch. 2](#)

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

- (1) A Channel 3 licence shall include conditions requiring the licence holder to pay to <sup>[F54]</sup>OFCOM] (in addition to any fees required to be so paid by virtue of section 4(1)(b))—
- in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 15(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
- in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
  - in respect of charges made in that period for the reception of programmes included in that service.
- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2)(a), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—
- the licence holder or any connected person, and
  - a person acting as an advertising agent,
- the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount

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by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of [F54OFCOM] .

- (5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.
- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A Channel 3 licence may include conditions—
- (a) enabling [F54OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—
- (a) authorising [F54OFCOM] to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (9) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—
- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
  - (b) the retail prices index for the month of November in the year preceding the relevant year;

and for this purpose “the retail prices index” means the general index of prices (for all items) published by the [F57Statistics Board].

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#### Textual Amendments

- F54** Words in ss. 17A-19 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 10](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F57** Words in s. 19(10) substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 6\(2\)](#); [S.I. 2008/839](#), art. 2

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

- C16** S. 19(2)-(6) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 9 para. 8\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C17** S. 19(2)-(6) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 237\(5\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### <sup>F58</sup>20 Duration and renewal of Channel 3 licences.

#### Textual Amendments

- F58** S. 20 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

(1) Where—

- (a) any change in the persons having control over—
- (i) a body to which a Channel 3 licence has been awarded or transferred in accordance with this Part of this Act, or
  - (ii) an associated programme provider,
- takes place within the relevant period, and
- (b) that change takes place without having been previously approved for the purposes of this section by [<sup>F59</sup>OFCOM] ,

then (subject to subsection (4)) [<sup>F59</sup>OFCOM] may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.

(2) In subsection (1)—

“associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and [<sup>F60</sup>is or is likely to be involved, to a substantial extent, in the provision of the programmes included] in the licensed service; and

“the relevant period”, in relation to a Channel 3 licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;

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

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- (3) [<sup>F59</sup>OFCOM] shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a)—
- (a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 15(3)(b) by that body (or, as the case may be, by the person to whom the licence was originally awarded), or
  - (b) it appears to them that the change would be prejudicial to the provision of Channel 3 as such a nationwide system of services as is mentioned in section 14(1);
- and [<sup>F59</sup>OFCOM] may refuse so to approve any such change if, in any circumstances not falling within paragraph (a) or (b) above, they consider it appropriate to do so.
- (4) [<sup>F59</sup>OFCOM] shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.
- (5) Where under subsection (1) [<sup>F59</sup>OFCOM] refuse to grant a licence to any body, section 17 shall (subject to section 17(14)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 42 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

#### Textual Amendments

- F59** Words in s. 21 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 11\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F60** Words in s. 21(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 11\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

#### <sup>F61</sup>21A Variation of regional Channel 3 licence following change of control.

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#### Textual Amendments

- F61** S. 21A repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) Where it appears to [<sup>F62</sup>OFCOM] —
- (a) that (whether as a result of the revocation of an existing regional Channel 3 licence or for any other reason) there will be, in the case of a particular area determined under section 14(2), a temporary lack of any regional Channel 3 service licensed to be provided for that area, but
  - (b) that it would be reasonably practicable for the holder of a licence to provide a regional Channel 3 service for any other such area to provide his licensed service for the area referred to in paragraph (a) as well,

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[<sup>F62</sup>OFCOM] may invite the holder of that licence temporarily to provide his licensed service for that additional area.

- (2) If the holder of that licence agrees so to provide his licensed service, [<sup>F62</sup>OFCOM] shall authorise the provision of that service for the additional area in question, during such period as they may determine, by means of a variation of the licence to that effect.

#### Textual Amendments

**F62** Words in s. 22 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 12](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### Channel 4

PROSPECTIVE

#### 23 The Channel Four Television Corporation.

- (1) There shall be a corporation to be called the Channel Four Television Corporation (in this Part referred to as “the Corporation”).
- (2) The Corporation shall consist of—
- (a) a chairman and a deputy chairman appointed by [<sup>F63</sup>OFCOM] ; and
  - (b) such number of other members, not being less than eleven nor more than thirteen, as [<sup>F63</sup>OFCOM] may from time to time determine.
- (3) The other members referred to in subsection (2)(b) shall consist of—
- (a) persons appointed by [<sup>F63</sup>OFCOM] ; and
  - (b) ex-officio members of the Corporation;
- and the total number of members appointed by [<sup>F63</sup>OFCOM] under subsection (2)(a) and paragraph (a) above shall exceed the number of ex-officio members.
- (4) Any appointment made by [<sup>F63</sup>OFCOM] under subsection (2)(a) or (3)(a) shall require the approval of the Secretary of State.
- (5) For the purposes of subsection (3) the following persons shall be ex-officio members of the Corporation, namely—
- (a) the chief executive of the Corporation; and
  - (b) such other employees of the Corporation as may for the time being be nominated by the chief executive and the chairman of the Corporation acting jointly.
- (6) Schedule 3 to this Act shall have effect with respect to the Corporation.

#### Textual Amendments

**F63** Words in s. 23 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 13](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)



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

**C18** S. 23: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 4](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

- (1) [<sup>F64</sup>The Corporation must] secure the continued provision (subject to and in accordance with the provisions of this Part) of the television broadcasting service known as Channel 4.
- (2) All the shares in the body corporate referred to in section 12(2) of the 1981 Act (activities to be carried on by subsidiary of Independent Broadcasting Authority) shall vest in the Corporation on 1st January 1993.
- (3) Channel 4 shall be provided by the Corporation under a licence granted to them by [<sup>F65</sup>OFCOM], and shall be so provided for so much of England, Scotland and Northern Ireland as may from time to time be reasonably practicable.

- <sup>F66</sup>(4) .....
- <sup>F66</sup>(5) .....
- <sup>F67</sup>(6) .....

**Textual Amendments**

- F64** Words in s. 24(1) substituted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 22\(5\)](#), 47(1)
- F65** Words in s. 24(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 14](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F66** S. 24(4)(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F67** S. 24(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 199\(3\)](#), 411(2), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

PROSPECTIVE

**<sup>F68</sup>25 Conditions to be included in Channel 4 licence.**

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**Textual Amendments**

- F68** S. 25 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**<sup>F69</sup>26 Revenue deficits of Corporation to be funded by Channel 3 licensees.**

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**Textual Amendments**

**F69** S. 26 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 201, 411(2), [Sch. 19\(1\)](#) Note 1 6 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**<sup>F70</sup>27 Application of excess revenues of Corporation.**

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**Textual Amendments**

**F70** S. 27 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 201, 411(2), [Sch. 19\(1\)](#) Note 1 6 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

*Channel 5*

**28 Channel 5.**

- (1) [<sup>F71</sup>OFCOM] shall do all that they can to secure the provision of a television broadcasting service for any such minimum area of the United Kingdom as may be determined by them in accordance with subsection (2); and any such service shall be known as Channel 5.
- (2) In determining the minimum area of the United Kingdom for which Channel 5 is to be provided [<sup>F71</sup>OFCOM] shall have regard to the following consideration, namely that the service should, so far as is reasonably practicable, make the most effective use of the frequencies on which it is to be provided.
- (3) If [<sup>F71</sup>OFCOM] so determine, Channel 5 shall be provided under a particular licence only between such times of the day or on such days of the week (or both) as they may determine.
- (4) Where [<sup>F71</sup>OFCOM] have granted a licence to provide Channel 5, they may, if it appears to them to be appropriate to do so in view of any lack of facilities available for transmitting the service, dispense with any requirement to provide the service for such part of the area referred to in subsection (2) as they may determine; and any such dispensation shall have effect for such period as they may determine.

**Textual Amendments**

**F71** Words in s. 28 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 15](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- (1) Subject to subsections (2) and (3), sections 15 to 21 shall apply in relation to a Channel 5 licence as they apply in relation to a regional Channel 3 licence.
- (2) In its application in relation to a Channel 5 licence—

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(a) section 15(1)(b)(i) shall be read as referring to any such minimum area of the United Kingdom as is determined by [<sup>F72</sup>OFCOM] in accordance with section 28(2); <sup>F73</sup>...

<sup>F73</sup>(b) .....

<sup>F74</sup>(3) .....

**Textual Amendments**

**F72** Words in s. 29(2)(a) substituted (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 15 para. 16(2)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

**F73** S. 29(2)(b) and the word immediately preceding it repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 15 para. 16(1)(a)**, **Sch. 19(1)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

**F74** S. 29(3) repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 15 para. 16(1)(b)**, **Sch. 19(1)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

<sup>F75</sup>**30 Initial Channel 5 licensee required to retune equipment susceptible to interference.**

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**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 280(10), s. 296(11), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

*Provision of news programmes*

<sup>F75</sup>**31 Provision of news on Channels 3 and 5.**

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**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 280(10), s. 296(11), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

<sup>F75</sup>**31A Appointment of news provider by holders of regional Channel 3 licences.**

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**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 280(10), s. 296(11), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

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**F75 32 Nomination of bodies to provide news for regional Channel 3 services.**

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**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

**F75 33 Conditions requiring holder of Channel 3 or Channel 5 licence to deliver promised service.**

.....

**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F75 34 Schools programmes.**

.....

**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F75 35 Subtitling for the deaf.**

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**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F75 36 Party political broadcasts.**

.....

**Textual Amendments**

**F75** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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### 37 Announcements of programme schedules.

- (1) Any Channel 3 licence or licence to provide Channel 4 may include conditions requiring the licence holder to include in the licensed service such announcements concerning relevant programme schedules as [<sup>F76</sup>OFCOM] may determine.
- (2) In this section “relevant programme schedules” means—
  - (a) in relation to a Channel 3 licence, programme schedules for programmes to be broadcast on Channel 4 and, where any part of the area for which the licensed service is to be provided is in Wales, programme schedules for programmes to be broadcast on S4C; and
  - (b) in relation to the licence to provide Channel 4, programme schedules for programmes to be included in any Channel 3 service.

#### Textual Amendments

**F76** Words in s. 37(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 17](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- (1) Any Channel 3 licence or licence to provide Channel 4 or Channel 5 shall include conditions requiring the licence holder—
  - (a) to make arrangements for promoting, in relation to employment by him, equality of opportunity between men and women and between persons of different racial groups; and
  - (b) to review those arrangements from time to time.
- (2) In subsection (1) “racial group” has the same meaning as in the <sup>M1</sup>Race Relations Act 1976.

#### Marginal Citations

**M1** 1976 c. 74.

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

- (1) This section has effect with respect to the making of arrangements which—
  - (a) apply to all the holders of regional Channel 3 licences, and
  - (b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services,  
 being arrangements made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of such services which is able to compete effectively with other television programme services provided in the United Kingdom; and any such arrangements are referred to in this section as “networking arrangements”.
- (2) Any application for a regional Channel 3 licence shall, in addition to being accompanied by any such proposals as are mentioned in section 15(3)(b) to

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- (e), be accompanied by the applicant's proposals for participating in networking arrangements made under this section; and—
- (a) where a person has duly made such an application, the Commission—
    - (i) shall, as soon as reasonably practicable after the closing date for applications for the licence, send details of his proposals for participating in such arrangements to the [<sup>F77</sup>the Office of Fair Trading], and
    - (ii) (without prejudice to the operation of section 16(1)) shall not proceed to consider whether to award him the licence as mentioned in that provision unless it appears to the Commission that any such proposals are satisfactory; and
  - (b) section 33 shall apply to any such proposals as it applies to the proposals submitted by the applicant under section 15(3)(c) to (e).
- (3) The Commission may publish, in such manner as they consider appropriate, general guidance to applicants for a regional Channel 3 licence as to the kinds of proposals which they would consider satisfactory for the purposes of subsection (2)(a); but before doing so the Commission—
- (a) shall consult [<sup>F78</sup>the Office of Fair Trading], and
  - (b) if [<sup>F79</sup>it] requests them to make any change in the guidance, shall incorporate the change in the guidance.
- (4) Each regional Channel 3 licence shall include conditions requiring the licence holder to do all that he can to secure—
- (a) (in the case of a licence granted before the relevant date) that, by that date, networking arrangements have been made which—
    - (i) have been entered into by all the holders of regional Channel 3 licences, and
    - (ii) have been approved by the Commission; and
  - (b) (in any case) that, so long as he provides his licensed service, there are in force networking arrangements which have been so entered into and approved (unless there are for the time being in force any arrangements made by the Commission under subsection (5)).
- (5) If—
- (a) no such arrangements as are mentioned in subsection (4)(a) are made by the relevant date, or
  - (b) any such arrangements are so made but cease to be in force at any time before 1st January 1995,
- the Commission may themselves draw up such networking arrangements as they consider appropriate; and, if they do so—
- (i) they shall notify all the holders of regional Channel 3 licences of those arrangements, and
  - (ii) those arrangements shall (subject to subsection (6)) come into force on a date determined by the Commission;
- and each regional Channel 3 licence shall include conditions requiring the licence holder to give effect to any arrangements made by the Commission under this subsection as for the time being in force.
- (6) No arrangements made by the Commission under subsection (5) shall come into force at any time after 31st December 1994.

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- (7) Where—
- (a) any such arrangements have come into force in accordance with subsection (6), but
  - (b) any networking arrangements are subsequently—
    - (i) entered into by all the holders of regional Channel 3 licences, and
    - (ii) approved by the Commission,
 the arrangements referred to in paragraph (a) shall cease to have effect on the coming into force of the arrangements referred to in paragraph (b).
- (8) Where any arrangements have been approved by the Commission under subsection (4) or (7)(b), no modification of those arrangements shall be made by the holders of regional Channel 3 licences unless it too has been so approved.
- (9) Where any arrangements have been made by the Commission under subsection (5), they may (whether before or after the date specified in subsection (6)) make such modification of those arrangements as they consider appropriate; and, if they do so—
- (a) they shall notify all the holders of regional Channel 3 licences of the modification, and
  - (b) the modification shall come into force on a date determined by the Commission.
- <sup>F80</sup>(9A) The matters to which the Commission shall have regard in deciding whether to approve any arrangements or modification under subsection (4) or (8) include the likely effect of the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, on the ability of the holders of regional Channel 3 licences to maintain the quality and range—
- (a) of the regional programmes (as defined by section 21A(9)) included in each regional Channel 3 service, and
  - (b) of the other programmes included in each service which contribute to the regional character of the service.]
- <sup>F81</sup>[(10) Without prejudice to the generality of their power to refuse to approve any arrangements or modification under subsection (4) or (8), the Commission shall refuse to do so if—
- (a) they are not satisfied that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be appropriate for the purpose mentioned in subsection (1), or
  - (b) it appears to them that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be likely to prejudice the ability of the holder of any regional Channel 3 licence to comply with—
    - (i) any condition imposed in pursuance of section 33(1), for the purpose of securing the implementation of proposals relating to the matters specified in section 16(2)(c), or
    - (ii) any condition imposed in pursuance of subsection (3) of section 21A in relation to the matters specified in paragraph (a) of that subsection.]
- (11) Where the Commission have—
- (a) approved any arrangements or modification under subsection (4), (7)(b) or (8), or
  - (b) given with respect to any arrangements or modification the notification required by subsection (5)(i) or (9)(a),

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they shall, as soon as reasonably practicable after giving their approval or (as the case may be) that notification—

- (i) publish details of the arrangements or modification in such manner as they consider appropriate, and
- (ii) comply with the appropriate requirement specified in subsection (12) (a) or (b).

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

- (a) in the case of any such arrangements as are referred to in paragraph (a) or (b) of that subsection, to refer those arrangements to [F82the Office of Fair Trading], and
- (b) in the case of any such modification as is so referred to, to inform [F83it] of that modification;

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

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

#### Textual Amendments

- F77** Words in s. 39(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 24\(3\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F78** Words in s. 39(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 24\(3\)\(b\) \(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F79** Word in s. 39(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 24\(3\)\(b\) \(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F80** S. 39(9A) inserted (1.10.1996) by [1996 c. 55, s. 79\(2\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 4 Sch. 1](#)
- F81** S. 39(10) substituted (1.10.1996) by [1996 c. 55, s. 79\(3\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- F82** Words in s. 39(12) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 24\(3\)\(c\) \(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F83** Word in s. 39(12) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 24\(3\)\(c\) \(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### Enforcement of licences

#### 40 Power to direct licensee to broadcast correction or [F84a statement of findings] or not to repeat programme.

- (1) If [F85OFCOM] are satisfied—
- (a) that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence, and
  - (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or [F84a statement of findings] (or both) under this subsection,

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they may (subject to subsection (2)) direct the licence holder to include in the licensed service a correction or [<sup>F84</sup>a statement of findings] (or both) in such form, and at such time or times, as they may determine.

- (2) [<sup>F85</sup>OFCOM] shall not give any person a direction under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where the holder of a licence includes a correction or [<sup>F84</sup>a statement of findings] in the licensed service in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (4) If [<sup>F85</sup>OFCOM] are satisfied that the inclusion by the holder of a Channel 3 or Channel 5 licence of any programme in the licensed service involved a failure by him to comply with any condition of the licence, they may direct him not to include that programme in that service on any future occasion.
- (5) This section shall apply in relation to Channel 4 as if any reference to a Channel 3 licence were a reference to the licence to provide Channel 4.
- [<sup>F86</sup>(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.]

#### Textual Amendments

- F84** Words in s. 40 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 344\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F85** Words in ss. 40-42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 18\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F86** S. 40(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 344\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C19** S. 40 applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 8\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- C20** S. 40(1)-(4) applied (1.10.1996) by [1996 c. 55, s. 23\(8\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- C21** S. 40(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 2\(a\)](#) (with art. 5)

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

- (1) If [<sup>F85</sup>OFCOM] are satisfied that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence or with any direction given by [<sup>F85</sup>OFCOM] under or by virtue of any provision of this Part [<sup>F87</sup>, Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003], they may (subject to the following provisions of this section) serve on him—
  - (a) a notice requiring him to pay, within a specified period, a specified financial penalty to [<sup>F85</sup>OFCOM]; or
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.



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- [<sup>F88</sup>(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) (a) shall not exceed 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.]
- (3) [<sup>F85</sup>OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [<sup>F85</sup>OFCOM] may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (5) It is hereby declared that any exercise by [<sup>F85</sup>OFCOM] of their powers under subsection (1) of this section in respect of any failure to comply with any condition of a licence shall not preclude any exercise by them of their powers under section 40 in respect of that failure.
- (6) This section shall apply in relation to Channel 4 as if—
- (a) any reference to a Channel 3 licence were a reference to the licence to provide Channel 4; and
  - (b) subsection (1)(b) were omitted.

#### Textual Amendments

- F85** Words in ss. 40–42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 18\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F87** Words in s. 41(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 18\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F88** S. 41(1A)–(1C) substituted for s. 41(2) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 3\(1\)\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C22** S. 41(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 3\(a\)](#) (with art. 5)

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

- (1) If [<sup>F85</sup>OFCOM] are satisfied—
- (a) that the holder of a Channel 3 or Channel 5 licence is failing to comply with any condition of the licence or with any direction given by them under or by

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virtue of any provision of this Part [F89, Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003], and

- (b) that that failure is such that, if not remedied, it would justify the revocation of the licence,

they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).

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

- (a) stating that [F85OFCOM] are satisfied as mentioned in subsection (1);  
 (b) specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and  
 (c) stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, [F85OFCOM] will revoke his licence under subsection (3).

- (3) If at the end of the period specified in a notice under subsection (2) [F85OFCOM] are satisfied—

- (a) that the person on whom the notice was served has failed to take the steps specified in it, and  
 (b) that it is necessary in the public interest to revoke his licence,

they shall (subject to subsection (8)) serve on that person a notice revoking his licence.

- (4) If [F85OFCOM] are satisfied in the case of any Channel 3 or Channel 5 licence—

- (a) that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and  
 (b) that it is appropriate for them to do so,

they shall (subject to subsection (8)) serve on him a notice revoking his licence.

- (5) If [F85OFCOM] are satisfied—

- (a) that the holder of a Channel 3 or Channel 5 licence provided them, in connection with his application for the licence, with information which was false in a material particular, or  
 (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,

they may (subject to subsection (8)) serve on him a notice revoking his licence.

- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.

- (7) If it appears to [F85OFCOM] to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.

- (8) [F85OFCOM] shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

#### Textual Amendments

**F85** Words in ss. 40–42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 18\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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**F89** Words in s. 42(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 18\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

- C23** S. 42 modified (1.10.1996) by [1996 c. 55, s. 4\(5\)\(6\)](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1996/2120, art. 4, [Sch. 1](#)
- C24** S. 42 extended (with modifications) (1.10.1996) by [1996 c. 55, s. 17\(6\)](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1996/2120, art. 4, [Sch. 1](#)
- C25** S. 42 applied (with modifications) (1.10.1996) by [1996 c. 55, s. 23\(8\)\(9\)](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1996/2120, art. 4, [Sch. 1](#)  
S. 42 applied (with modifications) (1.10.1996) by [1996 c. 55, s. 27\(8\)\(9\)](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1996/2120, art. 4, [Sch. 1](#)  
S. 42 applied (1.10.1996) by [1996 c. 55, s. 27\(8\)](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1996/2120, art. 4, [Sch. 1](#)
- C26** S. 42 applied (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 11](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- C27** S. 42(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 3\(b\)](#) (with art. 5)

<sup>F90</sup>[CHAPTER IIA

RESTRICTED SERVICES

**Textual Amendments**

**F90** Chapter heading and Ss. 42A, 42B inserted (1.4.1997) by [1996 c. 55, s. 85](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1997/1005, [art. 4](#)

**42A Restricted services.**

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

- (a) consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom,<sup>F91</sup> ...

<sup>F91</sup>(b) .....

**Textual Amendments**

**F91** S. 42A(b) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

- (1) An application for a licence to provide a restricted service shall be made in such manner as [<sup>F92</sup>OFCOM] may determine, and shall be accompanied by such fee (if any) as [<sup>F92</sup>OFCOM] may determine.
- (2) Subject to [<sup>F93</sup>subsections (3) to (3C)], sections 40 to 42 shall apply in relation to such a licence as they apply in relation to a licence to provide a Channel 3 service.

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(3) In its application to a licence to provide a restricted service, section 41 shall have effect with the omission of [F94 subsections (1A) to (1C)]; and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section [F95 is the maximum penalty given by subsection (3A).]

[F96(3A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(3B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(3C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (3A) or (3B) above.]]

#### Textual Amendments

- F92** Words in s. 42B(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 19](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F93** Words in s. 42B(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 4\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F94** Words in s. 42B(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 4\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F95** Words in s. 42B(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 4\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F96** Ss. 42B(3A)-(3C) substituted for 42B(4) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 4\(3\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C28** S. 42B(3A)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## F97 CHAPTER III

### SATELLITE TELEVISION SERVICES

#### Textual Amendments

- F97** Pt. I Ch. III repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F97 43 **Satellite television services.**

.....

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**F97F98 44 Licensing etc. of domestic satellite services.**

.....

**Textual Amendments**

**F98** S. 44 repealed (11.7.1997) by S.I. 1997/1682, arts. 1(2), 2, Sch. para. 4

**F97 45 Licensing etc. of satellite television services.**

.....

**F97 45A Special power of revocation and suspension on certain grounds in case of licence to provide satellite television service.**

.....

**F99 CHAPTER IV.**

LICENSABLE PROGRAMME SERVICES

**Textual Amendments**

**F99** Pt. I Ch. IV repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F99 46 Licensable programme services.**

.....

**F99 47 Licensing etc. of licensable programme services.**

.....

**CHAPTER V**

ADDITIONAL SERVICES PROVIDED ON TELEVISION BROADCASTING FREQUENCIES

**48 Additional services.**

- (1) In this Part “additional service” means any service which consists in the sending of [F100electronic] signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any television broadcasting service provided—[F101 on a relevant frequency].
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be—[F102 any part of the signals which—
  - (a) is not required for the purposes of the television broadcasting service for the purposes of which the frequency has been made available; and

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(b) is determined by OFCOM to be available for the provision of additional services;]

and references in this Part to spare capacity shall be construed accordingly.

[<sup>F103</sup>(2A) For the purposes of this Part, if they consider it appropriate to do so, OFCOM may, while an additional services licence is in force, from time to time modify the determination made under subsection (2)(b) for the purposes of that licence in any manner that does not reduce the amount of spare capacity made available for the licensed services; and when so modified any such licence shall have effect accordingly.]

(3) [<sup>F104</sup>OFCEM] shall, when determining under subsection [<sup>F105</sup>(2)(b)] the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency, have regard—

[<sup>F106</sup>(a) to the obligations contained in any code under section 303 of the Communications Act 2003 by virtue of subsection (5) of that section; and

(aa) to any need of the person providing the television broadcasting service in question to be able to use part of the signals carrying it for providing services (in addition to those provided for satisfying those obligations) which—

(i) are ancillary to programmes included in the service and directly related to their contents; or

(ii) relate to the promotion or listing of such programmes.]

(4) A person holding a licence to provide a Channel 3 service or Channel 4 or 5 shall be taken for the purposes of this Part to be authorised by his licence—

[<sup>F107</sup>(a) to provide services for the satisfaction in his case of obligations mentioned in subsection (3)(a); and

(b) to provide in relation to his television broadcasting service any such services as are mentioned in subsection (3)(aa).]

<sup>F108</sup>(5) . . . . .

[<sup>F109</sup>(6) In this section—

“electronic signals” means signals within the meaning of section 32 of the Communications Act 2003;

“relevant frequency” means a frequency made available by OFCOM for the purposes of a television broadcasting service.]

#### Textual Amendments

**F100** Words in s. 48(1) substituted (25.7.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 20\(2\)\(a\)](#) (with [Sch. 15 para. 20\(8\), Sch. 18](#)); S.I. 2003/1900, art. 2(1), Sch. 1

**F101** Words in s. 48(1) substituted for s. 48(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 20\(2\)\(b\)](#) (with [Sch. 15 para. 20\(8\), Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F102** Words in s. 48(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 20\(3\)](#) (with [Sch. 15 para. 20\(8\), Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F103** S. 48(2A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 20\(4\)](#) (with [Sch. 15 para. 20\(8\), Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F104** Words in s. 48(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 20\(5\)\(a\)](#) (with [Sch. 15 para. 20\(8\), Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)



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- F105** Words in s. 48(3) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 20(5)(b)** (with **Sch. 15 para. 20(8), Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F106** S. 48(3)(a)-(aa) substituted for s. 48(3)(a)-(c) (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 20(5)(c)** (with **Sch. 15 para. 20(8), Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F107** S. 48(4)(a)(b) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 20(6)** (with **Sch. 15 para. 20(8), Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F108** S. 48(5) repealed (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F109** S. 48(6) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 20(7)** (with **Sch. 15 para. 20(8), Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### 49 Licensing of additional services.

- (1) Subject to subsection (2), [F110OFCOM] shall do all that they can to secure that, in the case of each [F111relevant frequency], all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by [F110OFCOM] in accordance with this section.
- [F112(1A) An additional services licence is not required for an additional service that is comprised in the public teletext service (within the meaning of Part 3 of the Communications Act 2003).]
- (4) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.
- (5) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as [F110OFCOM] may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (6) Subsection (5) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act.
- (7) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (5) as they apply in relation to the provision of such services by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.
- (8) Every licence under this Part to provide a television broadcasting service shall include such conditions as appear to [F110OFCOM] to be appropriate for securing that the licence holder grants—
- to any person who holds a licence to provide additional services on the frequency on which that broadcasting service is provided, and
  - to any person who is authorised by any such person as mentioned in subsection (5) to provide additional services on that frequency,
- access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.

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- (9) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (8) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by [F110OFCOM] .
- (10) In this Part “additional services licence” means a licence to provide additional services [F113and “relevant frequency” has the same meaning as in section 48.]

#### Textual Amendments

- F110** Words in s. 49 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 21\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F111** Words in s. 49(1) substituted for s. 49(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 21\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F112** S. 49(1A) substituted for s. 49(2)(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 21\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with arts. 8, 11)
- F113** Words in s. 49(10) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 21\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## 50 Applications for additional services licences.

- (1) Where [F114OFCOM] propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the television broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (ii) [F115... the extent and nature of the spare capacity which is to be allocated by the licence;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 52(1)(c) if he were granted the licence.
- (2) [F114OFCOM] may, if they think fit, specify under subsection (1)(d)(ii)—
- (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan indicating—
    - (i) the nature of any additional services which the applicant proposes to provide, and



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- (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 49(5);
  - (c) the applicant's cash bid in respect of the licence; and
  - (d) such information as [F114OFCOM] may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving such an application and before determining it [F114OFCOM] may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to [F114OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [F114OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
  - (c) such other information connected with his application as [F114OFCOM] consider appropriate.

F116(7) .....

#### Textual Amendments

- F114** Words in s. 50 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 22\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F115** Words in s. 50(1)(b)(ii) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 22\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F116** S. 50(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 22\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) Where a person has made an application for an additional services licence in accordance with section 50, [F117OFCOM] shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—
- [F118(a) that the technical plan submitted under section 50(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and]
  - (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;

and any reference to an applicant in section 17 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to [F117OFCOM] that the requirements of paragraphs (a) and (b) above are satisfied.

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<sup>F119</sup>(2) .....

(3) Subject to subsection (4), [<sup>F120</sup>section s17 and 17A] shall apply in relation to an additional services licence as [<sup>F120</sup>they apply] in relation to a Channel 3 licence.

(4) In the application of section 17 in relation to an additional services licence—

(a) the provisions of subsection (4) down to the end of paragraph (b) shall be omitted;

(b) in subsection (7)(a), the reference to section 19(1) shall be construed as a reference to section 52(1); and

(c) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b)—

“(b) the name of every other applicant in whose case it appeared to [<sup>F117</sup>OFCOM] that the requirement specified in section 51(1)(a) was satisfied;”.

(5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—

(a) that person indicates to [<sup>F117</sup>OFCOM] that none of the services in question will be provided once the licence has come into force, or

(b) [<sup>F117</sup>OFCOM] for any other reason have reasonable grounds for believing that none of those services will be so provided,

then, subject to subsection (6)—

(i) [<sup>F117</sup>OFCOM] shall serve on him a notice revoking the licence as from the time the notice is served on him, and

(ii) section 17 (as applied by subsection (3) above) shall, subject to section 17(14), have effect as if he had not made an application for the licence.

(6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless [<sup>F117</sup>OFCOM] have served on him a notice stating their grounds for believing that none of the services in question will be provided once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

<sup>F121</sup>(7) .....

#### Textual Amendments

**F117** Words in s. 51 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 23\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F118** S. 51(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 23\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F119** S. 51(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 23\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F120** Words in S. 51(3) substituted (1.10.1996) by [1996 c. 55, s. 86\(2\)](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120, art. 4, Sch. 1](#)

**F121** S. 51(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 23\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- (1) An additional services licence shall include conditions requiring the licence holder to pay to [F122OFCOM] (in addition to any fees required to be so paid by virtue of section 4(1)(b))—
  - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 50(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
  - (a) enabling [F122OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
  - (a) authorising [F122OFCOM] to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
  - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,

any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

### Textual Amendments

**F122** Words in s. 52 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 24](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- (1) <sup>F123</sup>A licence to provide additional services on a frequency which is a relevant frequency for the purposes of section 48 or (in the case of a licence granted before the television transfer date) was assigned under section 65—
- (a) shall, subject to the provisions of this Part, continue in force for a period of ten years, and
  - (b) may (subject to the following provisions of this section) be renewed on one or more occasions for a period of ten years beginning with the date of renewal.
- (2) An application for the renewal of a licence under subsection (1) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than <sup>F124</sup>the day falling three months before] the relevant date.
- <sup>F125</sup>(3) .....
- (4) Where an application is made for the renewal of a licence under subsection (1) <sup>F126</sup>..., <sup>F127</sup>[OFCOM] may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (9).
- (5) Where an application for the renewal of an additional services licence has been duly made to <sup>F127</sup>[OFCOM], they may only (subject to subsection (6)) refuse the application if—
- (a) they are not satisfied that any additional service specified in the technical plan submitted under section 50(3)(b) would, if the licence were renewed, be provided as proposed in that plan, or
  - (b) they propose to grant a fresh additional services licence for the provision of any additional service which would differ in any material respect from any such service authorised to be provided under the applicant’s licence, or
  - (c) they propose to determine that all or part of the spare capacity allocated by the licence is to cease to be available for the provision of additional services in order that it may be used by any relevant person for the purpose of enhancing the technical quality of his television broadcasting service;
- and in paragraph (c) “relevant person” means the person providing a television broadcasting service on whose frequency the licensed service has been provided.
- (6) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of an additional services licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), but as if—
- (a) any reference to the awarding of a Channel 3 licence to the applicant were a reference to the renewal of the applicant’s licence under this section; and
  - (b) in section 17(7), the reference to section 19(1) were a reference to section 52(1).
- (7) On the grant of any such application <sup>F127</sup>[OFCOM] —
- (a) shall determine an amount which is to be payable to <sup>F127</sup>[OFCOM] by the licence holder in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (b) may specify a different percentage from that specified under section 50(1)(d)
    - (ii) as the percentage of qualifying revenue for each accounting period of his

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- that will be payable by the applicant in pursuance of section 52(1)(c) during the period for which the licence is to be renewed;
- and [F127OFCOM] may specify under paragraph (b) either of the things mentioned in section 50(2).
- (8) The amount determined by [F127OFCOM] under subsection (7)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be [F128the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 50(3).]
- [F129(8A) For the purposes of subsection (7)(b)—
- (a) different percentages may be specified for different accounting periods; and
  - (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (9) Where [F127OFCOM] have granted a person’s application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) the amount determined by them under subsection (7)(a), and
  - (b) any percentage specified by them under subsection (7)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (10) Where an additional services licence is renewed under this section—
- (a) any conditions included in it in pursuance of section 52 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by [F127OFCOM] under subsection (7)(a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (7)(b) above; and
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which an additional services licence is originally in force.
- (11) In this section “the relevant date”, in relation to an additional services licence, means the date which [F127OFCOM] determine to be that by which they would need to publish a notice under section 50 if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the additional services formerly provided under that licence.
- [F130(12) A determination for the purposes of subsection (11)—
- (a) must be made at least one year before the date determined; and
  - (b) must be notified by OFCOM to the person who holds the licence in question.
- (13) In this section “the television transfer date” has the same meaning as in the Communications Act 2003.]

#### Textual Amendments

**F123** Words in s. 53(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 25\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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- F124** Words in s. 53(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 25(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F125** S. 53(3) repealed (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para.8**
- F126** Words in s. 53(4) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F127** Words in s. 53(4)-(11) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 25(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F128** Words in s. 53(8) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 25(5)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F129** S. 53(8A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 25(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F130** S. 53(12)(13) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 25(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C29** S. 53(2) modified (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 18 para. 50(3)-(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C30** S. 53(12) restricted (29.12.2003) by Communications Act 2003 (c. 21), para. 50(2)(a), (6), s. 411(2), **Sch. 18 para. 50(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- (1) An additional services licence may include such conditions as [<sup>F131</sup>OFCOM] consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
- (a) the television broadcasting service or services on whose frequency or frequencies it is provided, or
  - (b) any other wireless telegraphy transmissions.

<sup>F132</sup>(2) .....

#### Textual Amendments

- F131** Words in s. 54(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 26(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F132** S. 54(2) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 26(3), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## 55 Enforcement of additional services licences.

- (1) If [<sup>F133</sup>OFCOM] are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by [<sup>F133</sup>OFCOM] under or by virtue of any provision of this Part, they may (subject to subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to [<sup>F133</sup>OFCOM].
- <sup>F134</sup>(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").



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- (1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1C) Section 52(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.]
- (3) [<sup>F133</sup>OFCOM] shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Section 42 shall apply in relation to an additional services licence as it applies in relation to a licence to provide a Channel 3 service, but with the omission of subsection (7) [<sup>F135</sup>and, in the case of a licence renewed under section 53 as if the reference in section 42(4) to the end of the period for which the licence is to continue in force were a reference to the end of the period for which it has been renewed.]

#### Textual Amendments

- F133** Words in s. 55 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 27\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F134** S. 55(1A)-(1C) substituted for S. 55(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 5](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F135** Words in s. 55(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 27\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C31** [S. 55\(1\)](#) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, [Sch. para. 3\(c\)](#) (with art. 5)

## CHAPTER VI

### TELEVISION BROADCASTING BY WELSH AUTHORITY

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

- (1) The authority which at the commencement of this section is called the Welsh Fourth Channel Authority shall continue in existence as a body corporate but—
- shall be known as Sianel Pedwar Cymru (or S4C); and
  - shall be constituted in accordance with <sup>F136</sup>... this Act;
- and in this Act references to the Welsh Authority are references to that authority.
- (2) The Welsh Authority shall consist of—
- a chairman appointed by the Secretary of State; and
  - such number of other members appointed by the Secretary of State, not being less than four nor more than eight, as he may from time to time determine.
- (3) Schedule 6 to this Act shall have effect with respect to the Welsh Authority.

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#### Textual Amendments

**F136** Words in s. 56(1)(b) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### <sup>F137</sup>57 Function and duties of Welsh Authority.

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#### Textual Amendments

**F137** S. 57 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), 206(8), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### 58 Sources of programmes for S4C.

- [<sup>F138</sup>(1) For the purpose mentioned in subsection (1A) the BBC shall—
- (a) provide to the Welsh Authority (free of charge) sufficient television programmes in Welsh to occupy not less than ten hours' transmission time per week; and
  - (b) do so in a way which meets the reasonable requirements of the Authority.
- (1A) The purpose is to enable the Welsh Authority to fulfil—
- (a) so much of the public service remit for S4C as is contained in paragraph 3(2) (a) and (b) of Schedule 12 to the Communications Act 2003; and
  - (b) so much of the public service remit for S4C Digital as is contained in paragraph 3(3) of that Schedule.]

(2) It shall be the duty of the Channel Four Television Corporation—

    - (a) to provide the Welsh Authority with programme schedules for the programmes broadcast on Channel 4, including information as to the periods available for the broadcasting of advertisements, far enough in advance to enable the Welsh Authority to [<sup>F139</sup>fulfil so much of their public service remit in relation to S4C under paragraph 3 of Schedule 12 to the Communications Act 2003 as is contained in sub-paragraph (2)(c) of that paragraph]; and
    - (b) to provide the Welsh Authority (free of charge) with any programmes which are required by the Authority for the purpose of complying with that provision.

(3) The programmes broadcast on S4C may, to the extent that they are not provided under subsection (1) or (2), be obtained by the Welsh Authority from such persons as they think fit.

(4) Where any programmes provided under subsection (2) each form part of a series of programmes, the Welsh Authority shall ensure that the intervals between those programmes when broadcast on S4C normally correspond to the intervals between them when broadcast on Channel 4.

(5) The Welsh Authority shall publish, in such manner as they consider appropriate, advance notice of the programme schedules for the programmes to be broadcast on S4C.



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[<sup>F140</sup>(6) In this section “programme” does not include an advertisement.]

**Textual Amendments**

- F138** S. 58(1)(1A) substituted for s. 58(1) (12.8.2009) by [The Welsh Authority \(Digital Switchover\) Order 2009 \(S.I. 2009/1968\)](#), arts. 1, **4(2)**
- F139** Words in s. 58(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 28(3)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F140** S. 58(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 28(4)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C32** S. 58(5) applied (1.10.1996) by [1996 c. 55](#), s. **29(2)** (with s. 43(1)(6)); [S.I. 1996/2120](#), art. 4, **Sch. 1**

<sup>F141</sup>**59** Requirements to be complied with in relation to S4C programmes.

**Textual Amendments**

- F141** S. 59 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**60** Advertising on S4C.

<sup>F142</sup>(1) .....

<sup>F142</sup>(2) .....

<sup>F142</sup>(3) .....

(4) The Welsh Authority shall—

(a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be broadcast on S4C and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of S4C;

[<sup>F143</sup>(aa) from time to time consult the Secretary of State as to the forms and methods of product placement that should not be employed in the provision of S4C (including the descriptions of products, services or trade marks for which product placement should not be employed);] and

(b) carry out any directions which he may give to them in respect of such matters.

(5) The Welsh Authority shall not act as an advertising agent.

<sup>F144</sup>(6) .....

**Textual Amendments**

- F142** S. 60(1)-(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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- F143** S. 60(4)(aa) inserted (16.4.2010) by [The Audiovisual Media Services \(Product Placement\) Regulations 2010 \(S.I. 2010/831\)](#), regs. 1(1), **10(1)**
- F144** S. 60(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); [S.I. 2003/3142](#), art. 3(1), **Sch. 1** (with art. 11)
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- Modifications etc. (not altering text)**
- C33** S. 60 applied (1.10.1996) by [1996 c. 55, s. 29\(2\)](#) (with s. 43(1)(6)); [S.I. 1996/2120](#), art. 4, **Sch. 1**

**[<sup>F145</sup>61 Funding of Welsh Authority.**

- (1) The Secretary of State shall secure that in 2012 and each subsequent year the Welsh Authority are paid an amount which he considers sufficient to cover the cost to the Authority during that year of—
  - (a) providing the Authority's public services (within the meaning of section 207 of the Communications Act 2003), and
  - (b) arranging for the broadcasting or distribution of those services.
- (2) The Secretary of State may discharge the duty in subsection (1) by making payments himself or entering into an agreement with another person for that person to do so (or both).
- (3) If under this section the Welsh Authority are paid an amount for any year which exceeds the cost referred to in subsection (1), the Authority may pay the difference from the public service fund referred to in section 61A to the person (or pro rata to the persons) from whom payments were received.
- (4) Any sums required by the Secretary of State under this section shall be paid out of money provided by Parliament.]

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- Textual Amendments**
- F145** S. 61 substituted (14.2.2012) by [Public Bodies Act 2011 \(c. 24\)](#), **ss. 31, 38(1)**

**[<sup>F146</sup>61A Welsh Authority public service fund.**

- <sup>F147</sup>(1) .....
- (2) All amounts received by the Welsh Authority under section 61 <sup>F148</sup>... shall be kept by the Authority in a separate fund (in this section referred to as “the public service fund”) which may be applied only for the purposes of [<sup>F149</sup>their functions in relation to the provision of the services that are public services of the Authority (within the meaning of section 207 of the Communications Act 2003).]
  - (3) No S4C company shall receive any direct or indirect subsidy from the public service fund.
  - (4) The Welsh Authority shall secure that no television programme which has been wholly or partly financed out of the public service fund is included in a television programme service provided by an S4C company before it is first broadcast [<sup>F150</sup> on a television programme service that is one of their public services (within the meaning of section 207 of the Communications Act 2003)].
- <sup>F151</sup>(5) .....

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F151(6)] .....

**Textual Amendments**

- F146 S. 61A inserted (1.10.1996) by 1996 c. 55, s. 81(1); S.I. 1996/2120, art. 4 Sch. 1
- F147 S. 61A(1) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F148 Words in s. 61A(2) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F149 Words in s. 61A(2) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 207(8)(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F150 Words in s. 61A(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 207(8)(b), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F151 S. 61A(5)(6) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

F152 **62 Information to be supplied to Commission by Welsh Authority.**

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**Textual Amendments**

- F152 S. 62 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**63 Government control over S4C.**

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

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## 64 Audience research by Welsh Authority.

- (1) The Welsh Authority shall make arrangements for ascertaining—
- (a) the state of public opinion concerning programmes broadcast on S4C;
  - (b) any effects of such programmes on the attitudes or behaviour of persons who watch them; and
  - (c) the types of programme that members of the public would like to be broadcast on S4C.
- (2) Those arrangements shall—
- (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Welsh Authority; and
  - (b) include provision for full consideration by the Authority of the results of any such research.

### Modifications etc. (not altering text)

**C34** S. 64 applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

## CHAPTER VII

### SUPPLEMENTAL

## <sup>F153</sup>65 Assignment of frequencies by Secretary of State.

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### Textual Amendments

**F153** S. 65 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- (1) During such period as the Secretary of State may by order specify, all Channel 3 services shall be broadcast [<sup>F154</sup>so as to be available for reception by members of the public] by a single person under arrangements made with him by the persons licensed to provide those services; and every Channel 3 licence shall include such conditions as appear to [<sup>F155</sup>OFCOM] to be appropriate—
- (a) for securing that result and
  - (b) for securing that the costs incurred in respect of the broadcasting of those services (taken as a whole) during that period in accordance with those arrangements are shared by those persons in such manner as may be approved by the Secretary of State.
- (2) Any Channel 3 licence shall include such conditions as appear to [<sup>F155</sup>OFCOM] to be appropriate for securing that the costs incurred in respect of the distribution of Channel 3 services (taken as a whole) during such period as the Secretary of State may by order specify are shared by the persons licensed to provide those services in such manner as

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may be approved by the Secretary of State. In this subsection “distribution”, in relation to Channel 3 services, means the conveyance of those services (by whatever means and whether directly or indirectly) to the broadcasting stations from which they are broadcast [<sup>F154</sup>so as to be available for reception by members of the public].

[<sup>F156</sup>(2A) In subsections (1) and (2) “available for reception by members of the public” shall be construed in accordance with section 361 of the Communications Act 2003]

- (3) The Secretary of State may, at any time during the period referred to in subsection (1) or (2), by order provide for that period to be extended by such further period as is specified in the order; and any conditions included in a Channel 3 licence in pursuance of that subsection shall accordingly, in any such case, have effect in relation to that period as so extended.
- (4) Any Channel 3 licence or licence to provide Channel 4 or 5 shall include such conditions as appear to [<sup>F155</sup>OFCOM] to be appropriate for requiring the signals carrying the licensed service to attain high standards in terms of technical quality and reliability throughout so much of the relevant area as is for the time being reasonably practicable.
- (5) Before imposing any conditions in pursuance of subsection (4) [<sup>F155</sup>OFCOM] shall consult the Secretary of State as to how much of the relevant area is to be specified in the conditions as the area throughout which the required standards are to be attained.
- (6) In subsections (4) and (5) “the relevant area”—
  - (a) in relation to a Channel 3 or Channel 5 licence, means the area for which the licensed service is to be provided; and
  - (b) in relation to the licence to provide Channel 4, means England, Scotland and Northern Ireland.
- (7) The Welsh Authority shall do all that they can to ensure that the signals carrying S4C attain high standards in terms of technical quality and reliability throughout so much of Wales as is for the time being reasonably practicable.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F154** Words in s. 66(1)(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 29\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F155** Words in s. 66 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 29\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F156** S. 66(2A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 29\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

#### [<sup>F157</sup>66A Enforcement of licences held by BBC companies.

- (1) Where [<sup>F158</sup>OFCOM] —
  - (a) give a direction to a BBC company under section 40(1),
  - (b) serve a notice on a BBC company under any provision of section 41 or 42, or
  - (c) receive any written representations from a BBC company under section 40(2), 41(3) or 42(8),

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[<sup>F158</sup>OFCOM] shall send a copy of the direction, notice or representations to the Secretary of State.

- (2) References in subsection (1) to any of the provisions of sections 40 to 42 are references to that provision as applied—
  - (a) by section 42B(2), in relation to a licence to provide a restricted service,
  - <sup>F159</sup>(b) .....
  - <sup>F160</sup>(c) .....
  - <sup>F160</sup>(d) .....
  - (e) by section 55(4), in relation to an additional services licence.]

**Textual Amendments**

**F157** S. 66A inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1)(f), **Sch. 8 para. 3**; (with s. 43(1)(6))

**F158** Words in s. 66A substituted (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 15 para. 30** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F159** S. 66A(2)(b) omitted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 9(a)**

**F160** S. 66A(2)(c)(d) repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**67 Computation of qualifying revenue.**

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

<sup>F161</sup>**68 Certain receipts of Commission to be paid into Consolidated Fund.**

.....

**Textual Amendments**

**F161** Ss. 68-70 repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

<sup>F161</sup>**69 Frequency planning and research and development.**

.....

**Textual Amendments**

**F161** Ss. 68-70 repealed (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

<sup>F161</sup>**70 Representation by Commission of Government and other interests in connection with broadcasting matters.**

.....

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### Textual Amendments

**F161** Ss. 68-70 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## 71 Interpretation of Part I.

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

“the 1981 Act” means the <sup>M2</sup>Broadcasting Act 1981;

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

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

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

“Channel 3” means the system of television broadcasting services established <sup>F162</sup>... under section 14, and “a Channel 3 licence” means a licence to provide one of the services comprised within that system;

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

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

<sup>F162</sup>  
...

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

<sup>F163</sup>  
...

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

<sup>F162</sup>  
...

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

<sup>F163</sup>  
...

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

<sup>F164</sup>“restricted service” has the meaning given by section 42A;]

<sup>F165</sup>“S4C” <sup>F166</sup>and “S4C Digital” each] has the same meaning as in Part 3 of the Communications Act 2003;]

<sup>F162</sup>  
...

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

<sup>F167</sup>“television broadcasting service”, “television licensable content service” and “television programme service” each has the same meaning as in Part 3 of the Communications Act 2003;]

(2) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be



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construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

#### Textual Amendments

- F162** Words in s. 71(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F163** Definitions in s. 71(1) omitted (11.7.1997) by [S.I. 1997/1682](#), reg. 2, [Sch. para. 10\(a\)](#)
- F164** Definition in s. 71 inserted (1.4.1997) by [1996 c. 55](#), s. 148(1), [Sch. 10 Pt. II para. 17](#) (with s. 43(1)(6)); [S.I. 1997/1005](#), art. 4
- F165** Words in s. 71 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 31\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F166** Words in s. 71(1) inserted (12.8.2009) by [The Welsh Authority \(Digital Switchover\) Order 2009 \(S.I. 2009/1968\)](#), arts. 1, [4\(3\)](#)
- F167** Words in s. 71 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 31\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Marginal Citations

- M2** 1981 c. 68.

## <sup>F168</sup>PART II

### LOCAL DELIVERY SERVICES

#### Textual Amendments

- F168** [Pt. II](#) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## PART III

### INDEPENDENT RADIO SERVICES

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

- C35** [Pt. III](#): transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 5](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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## CHAPTER I

### REGULATION BY AUTHORITY OF INDEPENDENT RADIO SERVICES GENERALLY

#### *Establishment of Radio Authority*

#### <sup>F169</sup>83 The Radio Authority.

.....

##### Textual Amendments

**F169** S. 83 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

#### *Function of Authority*

#### <sup>F170</sup>84 Regulation by Authority of independent radio services.

.....

##### Textual Amendments

**F170** S. 84 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

#### 85 Licensing functions of Authority.

- (1) Subject to subsection (2), [<sup>F171</sup>OFCOM] may, in accordance with the following provisions of this Part, grant [<sup>F172</sup> licences to provide relevant independent radio services].
- (2) [<sup>F171</sup>OFCOM] shall do all that they can to secure the provision within the United Kingdom of—
  - (a) a diversity of national services each catering for tastes and interests different from those catered for by the others and of which—
    - (i) one is a service the greater part of which consists in the broadcasting of spoken material, and
    - (ii) another is a service which consists, wholly or mainly, in the broadcasting of music which, in the opinion of [<sup>F171</sup>OFCOM], is not pop music; and
  - (b) a range and diversity of local services.

<sup>F173</sup>(3) .....

<sup>F173</sup>(4) .....

- (5) The Secretary of State may by order make such amendments of subsection (2)(a) as he considers appropriate—

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- (a) for including in that provision a requirement that one of the national services there referred to should be a service of a particular description, or
  - (b) for removing such a requirement from that provision;
- and (without prejudice to the generality of section 200(2)(b)) any such order may make such consequential amendments of section 98(1)(b)(iii) as the Secretary of State considers appropriate.
- (6) In subsection (2)(a)(ii) “pop music” includes rock music and other kinds of modern popular music which are characterised by a strong rhythmic element and a reliance on electronic amplification for their performance (whether or not, in the case of any particular piece of rock or other such music, the music in question enjoys a current popularity as measured by the number of recordings sold).
- (7) An order shall not be made under subsection (5) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- [<sup>F174</sup>(8) In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—
- (a) sound broadcasting services;
  - (b) radio licensable content services;
  - (c) additional radio services.]

#### Textual Amendments

- F171** Words in s. 85(1)(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F172** Words in s. 85(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F173** S. 85(3)(4) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(4\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F174** S. 85(8) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(5\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

### *General provisions about licences*

#### **86 Licences under Part III.**

- (1) A licence shall be in writing and (subject to the provisions of this Part) shall continue in force [<sup>F175</sup>(subject to a suspension of the licence under section 111B)—
- (a) in the case of a licence to provide radio licensable content services, until such time as it is surrendered or is revoked in accordance with any of the following provisions of this Part; and
  - (b) in any other case, until whichever is the earlier of any such time or the end of the period specified in the licence.]
- (2) A licence may be granted by [<sup>F176</sup>OFCOM] for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified; and (without prejudice to the generality of the preceding provision) a

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licence may be so granted for the provision of a service which to any extent consists in the simultaneous broadcasting of different programmes on different frequencies.

[<sup>F177</sup>(3) A licence to provide a local or national service or to provide an additional service must specify a period of no more than twelve years as the period for which it is to be in force.]

(4) [<sup>F176</sup>OFCOM] —

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

and nothing in this Part shall be construed as affecting the operation of this subsection or of section 88(1) or (2)(b) or (c) or 89(1).

[<sup>F178</sup>(4A) Where [<sup>F176</sup>OFCOM] are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.]

(5) [<sup>F176</sup>OFCOM] may vary a licence by a notice served on the licence holder if—

- (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
- (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to [<sup>F176</sup>OFCOM] about the variation.

(6) Paragraph (a) of subsection (5) does not affect the operation of [<sup>F179</sup>section 97B [<sup>F180</sup>, 105A] or 110(1)(b)]; and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 102(1) or section 118(1).

(7) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of [<sup>F176</sup>OFCOM] .

(8) Without prejudice to the generality of subsection (7), [<sup>F176</sup>OFCOM] shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.

[<sup>F181</sup>(9) The holding of a licence by a person shall not relieve him of—

- (a) any liability in respect of a failure to hold [<sup>F182</sup>a licence under section 8 of the Wireless Telegraphy Act 2006]; or
- (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).]

#### Textual Amendments

**F175** Words in s. 86(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 252(1)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F176** Words in s. 86 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 33(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F177** S. 86(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 252(2)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

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- F178** S. 86(4A) inserted (24.7.1996) by 1996 c. 55, s. 136, 149(1)(f), **Sch. 8 para. 5** (with s. 43(1)(6))  
**F179** Words in s. 86(6) substituted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 30(1)**, 47(2)(b)  
**F180** Words in s. 86(6) inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 33(1)**, 47(1)  
**F181** S. 86(9) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 33(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)  
**F182** Words in s. 86(9)(a) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), s. 126(2), **Sch. 7 para. 11**

## 87 General licence conditions.

(1) A licence may include—

- (a) such conditions as appear to [F183OFCOM] to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act [F184], the Broadcasting Act 1996 or the Communications Act 2003];
- (b) conditions enabling [F183OFCOM] to supervise and enforce technical standards in connection with the provision of the licensed service;
- (c) conditions requiring the payment by the licence holder to [F183OFCOM] (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
- (d) conditions requiring the licence holder to furnish [F183OFCOM], in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under this Act [F185], the Broadcasting Act 1996 or the Communications Act 2003];
- (e) conditions requiring the licence holder, if found by [F183OFCOM] to be in breach of any condition of his licence, to reimburse to [F183OFCOM], in such circumstances as are specified in any conditions, any costs reasonably incurred by them in connection with the breach of that condition;
- (f) conditions providing for such incidental and supplemental matters as appear to [F183OFCOM] to be appropriate.

(2) A licence may in particular include—

- (a) conditions requiring the licence holder—
  - (i) to comply with any direction given by [F183OFCOM] as to such matters as are specified in the licence or are of a description so specified, or
  - (ii) (except to the extent that [F183OFCOM] consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified; and
- (b) conditions requiring the licence holder to permit—
  - (i) any employee of, or person authorised by, [F183OFCOM], F186 ...
  - F186 (ii) .....  
to enter any premises which are used in connection with the broadcasting of the licensed service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.

(3) The fees required to be paid to [F183OFCOM] by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by [F183OFCOM]; F187 ...

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- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and [F183OFCOM] shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide [F183OFCOM] with any information, and
  - (b) in purported compliance with that condition provides them with any information which is false in a material particular,
- he shall be taken for the purposes of sections 110 and 111 to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

#### Textual Amendments

- F183** Words in s. 87 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F184** Words in s. 87(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F185** Words in s. 87(1)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F186** S. 87(2)(b)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F187** Words in s. 87(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(5\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- C36** S. 87(1)(d) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), arts. 1, 10\(1\)\(a\)\(2\)](#) (a) (with [art. 5](#))

## 88 Restrictions on the holding of licences.

- (1) [F188OFCOM] shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - [F189](b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) [F188OFCOM] may accordingly—
- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—

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- (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
  - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
  - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
  - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
  - (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
    - (i) shareholdings in the body, or
    - (ii) the directors of the body,
 where such proposals are known to the body;
  - [<sup>F190</sup>(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
    - (i) shareholdings in the body; or
    - (ii) the directors of the body;
  - (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
    - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- [<sup>F191</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, [<sup>F188</sup>OFCOM] shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]
- (3) Where [<sup>F188</sup>OFCOM] —
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
  - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,
- any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
- (4) Those provisions shall not so have effect if [<sup>F188</sup>OFCOM] decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.



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- (5) Every licence shall include such conditions as [F188OFCOM] consider necessary or expedient to ensure that where—
- (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,
- [F188OFCOM] may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.

- [F192(6) The Commission shall not serve any such notice on the licence holder unless—
- (a) the Commission have notified him of the matters [F193constituting their grounds for revoking the licence] and given him a reasonable opportunity of making representations to them about those matters, and
  - (b) in a case where the relevant change is one falling within subsection (6A)—
    - (i) they have also given him an opportunity of complying with [F194the requirements imposed by or under Schedule 14 to the Communications Act 2003] within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.

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

- [F195(a) . . . . .
- (b) a change in the national market share (within the meaning of [F196Part 1 of Schedule 14 to the Communications Act 2003]) of one or more national newspapers (within the meaning of that Part of that Schedule);
- (c) a change in the local market share (within the meaning of [F197section 5]) in a particular area of one or more local newspapers (within the meaning of [F198Part 1 of Schedule 14 to the Communications Act 2003]).

[F199(6B)] . . . . .

[F200(6C) [F188OFCOM] shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.

(6D) Where [F188OFCOM] receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.]

(7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—

- (a) any change affecting the nature or characteristics of the body, or
- (b) any change in the persons having control over or interests in the body, [F201or
- (c) any other change giving rise to [F202a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,]]

being [F203(in any case)] a change which is such that, if it fell to [F188OFCOM] to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

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### Textual Amendments

- F188** Words in s. 88 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F189** S. 88(1)(b)(c) substituted for s. 88(1)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 350\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F190** S. 88(2)(da)(db) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F191** S. 88(2A) inserted (24.7.1996) by [1996 c. 55, s. 136, Sch. 8 para. 6\(2\)](#) (with s. 43(1)(6))
- F192** S. 88: subsections (6)(6A)(6B) substituted for subsection (6) (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 13\(2\)](#); [S.I. 1996/2120, art. 5, Sch. 2](#)
- F193** Words in s. 88(6)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F194** Words in s. 88(6)(b)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F195** S. 88(6A)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(5\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F196** Words in s. 88(6A)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F197** Words in s. 88(6A)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 12\(a\)](#)
- F198** Words in s. 88(6A)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 12\(b\)](#)
- F199** S. 88(6B) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(6\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F200** S. 88(6C)(6D) inserted (24.7.1996) by [1996 c. 55, s. 136, Sch. 8 para. 6\(3\)](#) (with s. 43(1)(6))
- F201** S. 88(7)(c) and the word “or” immediately preceding it inserted (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 13\(3\)\(a\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)
- F202** Words in s. 88(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F203** Words in s. 88(7) substituted (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 13\(3\)\(b\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)

### Modifications etc. (not altering text)

- C37** S. 88 modified (temp.) (17.7.2003) by [The Communications Act 2003 \(Commencement No. 1\) Order 2003 \(S.I. 2003/1900\), art. 5](#)
- C38** S. 88(1) modified (1.11.1996) by [1996 c. 55, s. 143\(3\)\(4\)\(6\)\(b\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)
- C39** S. 88(1)(a) amended (1.11.1996) by [1996 c. 55, s. 145\(7\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)

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

(1) Subject to subsection (2), a person shall be disqualified for holding a licence under this Part if within the last five years he has been convicted of—

- [<sup>F204</sup>(a) an offence under section 35 of the Wireless Telegraphy Act 2006 (unauthorised use etc of wireless telegraphy station or apparatus) consisting in the establishment or use of a wireless telegraphy station, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of Part 5 of that Act);]

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- [<sup>F204</sup>(aa) an offence under section 36 of that Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 8 of that Act would constitute an offence falling within paragraph (a);]
  - [<sup>F204</sup>(ab) an offence under section 37 or 38 of that Act (unlawful broadcasting offences);]
  - [<sup>F204</sup>(b) an offence under Part 5 of that Act (prohibition of broadcasting from sea or air); or]
  - (c) an offence under section 97 below.
- <sup>F205</sup>(2) .....
- (3) Every licence granted under this Part shall include conditions requiring the holder of the licence to do all that he can to ensure that no person who is disqualified for holding a licence by virtue of subsection (1) is [<sup>F206</sup>concerned in—
- (a) the provision of the licensed service or the making of programmes included in it; or
  - (b) the operation of [<sup>F207</sup>a wireless telegraphy station] used for broadcasting the service.]

**Textual Amendments**

- F204** S. 89(1)(a)(aa)(ab)(b) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 7 para. 12(2)**
- F205** S. 89(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F206** Words in s. 89(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 36\(3\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F207** Words in s. 89(3)(b) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 7 para. 12(3)**

*General provisions about licensed services*

<sup>F208</sup>**90 General requirements as to licensed services.**

.....

**Textual Amendments**

- F208** Ss. 90-96 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

<sup>F208</sup>**91 General code for programmes.**

.....

**Textual Amendments**

- F208** Ss. 90-96 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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**F20892 General provisions as to advertisements.**

.....

**Textual Amendments**

**F208** Ss. 90-96 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F20893 Control of advertisements.**

.....

**Textual Amendments**

**F208** Ss. 90-96 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F20894 Government control over licensed services.**

.....

**Textual Amendments**

**F208** Ss. 90-96 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F20895 Monitoring by Authority of programmes included in licensed services.**

.....

**Textual Amendments**

**F208** Ss. 90-96 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F20896 Audience research.**

.....

**Textual Amendments**

**F208** Ss. 90-96 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

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

- (1) Subject to subsection (2), any person who provides any [<sup>F209</sup>relevant regulated radio service] without being authorised to do so by or under a licence under this Part [<sup>F210</sup>or Part II of the Broadcasting Act 1996] shall be guilty of an offence.
- [<sup>F211</sup>(1A) In subsection (1) “relevant regulated radio service” means a service falling to be regulated by OFCOM under section 245 of the Communications Act 2003, other than a radio multiplex service.]
- (2) The Secretary of State may, after consultation with [<sup>F212</sup>OFCOM], by order provide that subsection (1) shall not apply to such services or descriptions of services as are specified in the order.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) No proceedings in respect of an offence under this section shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) Without prejudice to subsection (3) above, compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Textual Amendments**

- F209** Words in s. 97(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 37\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F210** Words in S. 97(1) inserted (1.10.1996) by [1996 c. 55, s. 148\(1\), Sch. 10 Pt. I para. 7\(b\)](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- F211** S. 97(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 37\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F212** Words in s. 97(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 37\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- C40** S. 97(1) excluded by [S.I. 1990/2536, art. 2\(1\)](#)
- C41** S. 97(1) excluded (19.3.2007) by [The Broadcasting Act 1990 \(Independent Radio Services Exceptions\) Order 2007 \(S.I. 2007/272\), arts. 1\(1\), 2](#)

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## <sup>F213</sup>Digital switchover

### Textual Amendments

**F213** Ss. 97A 97B and cross-heading inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 30(2), 47(2)(b)

### 97A Date for digital switchover

- (1) The Secretary of State may give notice to OFCOM nominating a date for digital switchover for the post-commencement services specified or described in the notice.
- (2) When nominating a date, or considering whether to nominate a date, the Secretary of State must have regard to any report submitted by OFCOM or the BBC under section 67(1)(b) of the Broadcasting Act 1996 (review of digital radio broadcasting).
- (3) The Secretary of State—
  - (a) may nominate different dates for different services, and
  - (b) may give notice to OFCOM withdrawing a nomination under this section.
- (4) In this section and section 97B—
 

“date for digital switchover”, in relation to a post-commencement service, means a date after which it will cease to be appropriate for the service to continue to be provided in analogue form;

“post-commencement service” means a local service, national service or additional service that is provided under a licence that—

  - (a) was granted on or after the day on which this section comes into force, or
  - (b) has been renewed under section 103B or 104AA.

### 97B Variation of licence period after date for digital switchover nominated

- (1) This section applies if the Secretary of State has nominated a date for digital switchover for a post-commencement service (and has not withdrawn the nomination).
- (2) If the period for which the licence to provide the post-commencement service is to continue in force ends after the date for digital switchover, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (3).
- (3) OFCOM may not reduce the period so that it ends less than 2 years after the day on which they issue the notice, unless the licence holder consents to such a reduction.
- (4) If the period for which the licence to provide the post-commencement service is to continue in force ends on or before the date for digital switchover, OFCOM may not vary the licence so that the period ends after that date.]

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## CHAPTER II

### SOUND BROADCASTING SERVICES

#### *National services*

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

- (1) Where [<sup>F214</sup>OFCOM] propose to grant a licence to provide a national service, they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the period for which the licence is to be granted,
    - (ii) the minimum area of the United Kingdom for which the service is to be provided,
    - [<sup>F215</sup>(ia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;]
    - (iii) if the service is to be one falling within section 85(2)(a)(i) or (ii), that the service is to be such a service, and
    - (iv) if there is any existing licensed national service, that the service is to be one which caters for tastes and interests different from those already catered for by any such service (as described in the notice);
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 102(1)(c) if he were granted the licence.
- (2) In determining the minimum area of the United Kingdom for which a national service is to be provided [<sup>F214</sup>OFCOM] shall have regard to the following considerations, namely—
- (a) that the service in question should, so far as is reasonably practicable, make the most effective use of the frequency or frequencies on which it is to be provided; but
  - (b) that the area for which it is to be provided should not be so extensive that the costs of providing it would be likely to affect the ability of the person providing the service to maintain it.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the applicant's proposals for providing a service that would <sup>F216</sup>...—
    - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), <sup>F217</sup>...
    - <sup>F217</sup>(ii) .....
  - [<sup>F218</sup>(aa) the applicant's proposals (if any) for providing a simulcast radio service corresponding to the service;]



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- (b) the fee specified in the notice under subsection (1)(d)(i);
- (c) the applicant's proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his proposed service;
- (d) the applicant's cash bid in respect of the licence;
- (e) such information as [F214OFCOM] may reasonably require—
  - (i) as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
  - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
- (f) such other information as [F214OFCOM] may reasonably require for the purpose of considering the application.

[F219(3A) For the purposes of subsection (1)(d)(ii)—

- (a) different percentages may be specified for different accounting periods; and
  - (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (4) At any time after receiving such an application and before determining it [F214OFCOM] may require the applicant to furnish additional information under any of paragraphs (a), [F220(aa),] (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to [F214OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [F214OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) the proposals submitted by him under subsection (3)(a) [F221 and (aa)]; and
  - (c) such other information connected with his application as [F214OFCOM] consider appropriate.
- (7) In this section
- [F222“national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996; and]
- “programme” does not include an advertisement.
- (8) In this Part “cash bid”, in relation to a licence, means an offer to pay to [F214OFCOM] a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

#### Textual Amendments

**F214** Words in s. 98 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F215** S. 98(1)(b)(iia) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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- F216** Word in s. 98(3)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 38(3)(a), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F217** S. 98(3)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 38(3)(b), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F218** S. 98(3)(aa) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 257(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F219** S. 98(3A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 38(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F220** Word in s. 98(4) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 38(5)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F221** Words in s. 98(6)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 38(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F222** Words in s. 98(7) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 257(4)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- (1) Where a person has made an application for a national licence in accordance with section 98, [<sup>F223</sup>OFCOM] shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 100 unless it appears to them—
- (a) that his proposed service would <sup>F224</sup>...—
- (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, <sup>F225</sup>...
- <sup>F225</sup>(ii) .....
- (b) that he would be able to maintain that service [<sup>F226</sup>and any proposed simulcast radio service corresponding to that service] throughout the period for which the licence would be in force.
- (2) Any reference to an applicant in section 100 (except in section 100(9)(b)) is accordingly a reference to an applicant in whose case it appears to [<sup>F223</sup>OFCOM] that the requirements of subsection (1)(a) and (b) above are satisfied.

### Textual Amendments

- F223** Words in s. 99 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 39(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F224** Word in s. 99(1)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 39(3)(a), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F225** S. 99(1)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 39(3)(b), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F226** Words in s. 99(1)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 39(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

(1) Subject to the following provisions of this section, [F227OFCOM] shall, after considering all the cash bids submitted by the applicants for a national licence, award the licence to the applicant who submitted the highest bid.

[F228(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a “simulcast applicant”), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—

- (a) disregard the requirement imposed by subsection (1); and
- (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.

(2) Where—

- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
- (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,

OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.

(2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—

- (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
- (b) they propose to exercise their power under subsection (3).

(2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).

(2C) In this Part references to a person’s cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.]

(3) [F227OFCOM] may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to [F227OFCOM], in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.

(4) If it appears to [F227OFCOM], in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—

- (a) they shall refer his application to the Secretary of State, together with—
  - (i) a copy of all documents submitted to them by the applicant, and

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- (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (5) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (6) In subsections (4) and (5) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
  - (a) paying any amounts payable by him by virtue of section 102(1), or
  - (b) otherwise financing the provision of his proposed service.
- (7) Where [F227OFCOM] are, by virtue of subsection (4), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (11)) have effect as if that person had not made an application for the licence.
- (8) Where [F227OFCOM] have awarded a national licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
  - (a) publish the matters specified in subsection (9) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (9) The matters referred to in subsection (8)(a) are—
  - (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to [F227OFCOM] that the requirement specified in section 99(1)(a) was satisfied;
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, [F227OFCOM]’s reasons for the licence having been so awarded; and
  - (d) such other information as [F227OFCOM] consider appropriate.
- (10) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (9) shall have effect as if—
  - (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (11) Subsections (1) to (6) shall not have effect as mentioned in subsection (7) if [F227OFCOM] decide that it would be desirable to publish a fresh notice under section 98 in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if [F227OFCOM] decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a further licence to provide the service in question.

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#### Textual Amendments

- F227** Words in s. 100 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 40](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F228** S. 100(1A)-(2C) substituted for s. 100(2) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### [<sup>F229</sup>100A] Licence conditions relating to simulcast radio services

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

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

#### Textual Amendments

- F229** S. 100A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(6\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- (1) If at any time after a national licence has been granted to any person but before the licence has come into force—
  - (a) that person indicates to [<sup>F230</sup>OFCOM] that he does not intend to provide [<sup>F231</sup>the licensed national service or that he does not intend to provide a corresponding simulcast radio service that he is required to provide by a condition imposed under section 100A], or
  - (b) [<sup>F230</sup>OFCOM] for any other reason have reasonable grounds for believing that that person will not provide [<sup>F232</sup>the licensed national service or any such simulcast radio service] once the licence has come into force,
 then, subject to subsection (2)—
  - (i) [<sup>F230</sup>OFCOM] shall serve on him a notice revoking the licence as from the time the notice is served on him, and
    - (ii) section 100 shall (subject to section 100(11)) have effect as if he had not made an application for the licence.
- (2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless [<sup>F230</sup>OFCOM] have served on him a notice stating their grounds for believing that he will not provide [<sup>F233</sup>the licensed national service or the simulcast radio service] once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where [<sup>F230</sup>OFCOM] revoke a national licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, [<sup>F234</sup>a specified financial penalty].

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- [<sup>F235</sup>(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).
- (3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
- (3C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.
- (3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.]
- (5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 122(4), be recoverable by [<sup>F230</sup>OFCOM] as a debt due to them from any person who controls that body.

#### Textual Amendments

- F230** Words in s. 101 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F231** Words in s. 101(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F232** Words in s. 101(1)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F233** Words in s. 101(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(4\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F234** Words in s. 101(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F235** S. 101(3A)-(3D) substituted for s. 101(4) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(2\)\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C42** S. 101(3) modified (1.11.1996) by [1996 c. 55, s. 145\(6\)\(b\)](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1996/2120, art. 5, [Sch. 2](#)
- C43** S. 101(3B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C44** S. 101(3C)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- (1) A national licence shall include conditions requiring the licence holder to pay to [<sup>F236</sup>OFCOM] (in addition to any fees required to be so paid by virtue of section 87(1)(c))—

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- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 98(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
- (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
  - (b) in respect of charges made in that period for the reception of programmes included in that service.
- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—
- (a) the licence holder or any connected person, and
  - (b) a person acting as an advertising agent,
- the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of the commission.
- (5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.
- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A national licence may include conditions—
- (a) enabling [<sup>F236</sup>OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—



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- (a) authorising [F236OFCOM] to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (9) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—
- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
  - (b) the retail prices index for the month of November in the year preceding the relevant year;
- and for this purpose “the retail prices index” means the general index of prices (for all items) published by the [F237Statistics Board].

#### Textual Amendments

**F236** Words in s. 102 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 42](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F237** Words in s. 102(10) substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 6\(3\)](#); [S.I. 2008/839](#), art. 2

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

- (1) Where—
- (a) any change in the persons having control over—
    - (i) a body to which a national licence has been awarded or transferred in accordance with this Part of this Act, or
    - (ii) an associated programme provider,takes place within the relevant period, and
  - (b) that change takes place without having been previously approved for the purposes of this section by [F238OFCOM],
- then (subject to subsection (5)) [F238OFCOM] may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.
- (2) In subsection (1)—

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“associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and [<sup>F239</sup>is or is likely to be involved, to a substantial extent, in the provision of the programmes included] in the licensed service; and

“the relevant period”, in relation to a national licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;

and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection [<sup>F240</sup>as it has effect for the purposes of that Schedule.]

- (3) [<sup>F238</sup>OFCOM] shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 98(3)(a) by that body (or, as the case may be, by the person to whom the licence was originally awarded).
- (4) [<sup>F238</sup>OFCOM] may refuse so to approve any such change if, in any circumstances not falling within subsection (3), they consider it appropriate to do so.
- (5) [<sup>F238</sup>OFCOM] shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.
- (6) Where under subsection (1) [<sup>F238</sup>OFCOM] refuse to grant a licence to any body, section 100 shall (subject to section 100(11)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 111 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

#### Textual Amendments

**F238** Words in s. 103 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 43\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F239** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 43\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F240** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 43\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

**C45** S. 103 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 44\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### [<sup>F241</sup>103A] **Renewal of national licences.**

- (1) A national licence may (subject to the following provisions of this section) be renewed [<sup>F242</sup>under this section] on one occasion for a period of [<sup>F243</sup>twelve] years beginning with the date of renewal.
- (2) An application for the renewal of a national licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would

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otherwise cease to be in force and not later than [F244]the day falling three months before] the relevant date.

- (3) Where any such application is made F245 ...—
- F246 (a) .....
- (b) F247 ..., [F248]OFCOM] may postpone the consideration of the application for so long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a national licence has been duly made to [F248]OFCOM], they shall (subject to subsection (5)) grant the application if, but only if—
- (a) [F248]OFCOM] are satisfied that the applicant would, if his licence were renewed, provide a national service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section),
- [F249](b) the applicant gave notice to OFCOM, within the period of one month beginning with the commencement of section 42 of the Broadcasting Act 1996, of his intention to provide a simulcast radio service, and]
- (c) a simulcast radio service provided by the applicant is being broadcast in digital form or [F248]OFCOM] are satisfied that by the relevant date the applicant has done all that it would in the circumstances be reasonable to expect him to do by that date to procure the broadcasting of such a service within such time as [F248]OFCOM] consider reasonable.
- (5) Section 100(4) to (6) shall apply in relation to an applicant for the renewal of a national licence as those provisions apply in relation to such an applicant as is mentioned in section 100(4), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any application under this section [F248]OFCOM] —
- (a) may, in a case where a simulcast radio service provided by the applicant is not yet being broadcast in digital form on the relevant date, determine a date by which the broadcasting of such a service in that form must begin;
- (b) shall determine an amount which is to be payable to [F248]OFCOM] by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
- (c) may specify a different percentage from that specified under section 98(1)(d) (i) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 102(1)(c) during the period for which the licence is to be renewed.
- [F250](7) The amount determined under subsection (6)(b) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 98.
- (7A) For the purposes of subsection (6)(c)—
- (a) different percentages may be specified for different accounting periods; and
- (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (8) Where [F248]OFCOM] have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably

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practicable <sup>F251</sup>..., as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—

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

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

(9) Where a national licence has been renewed under this section—

- (a) any conditions included in it in pursuance of section 102 shall have effect during the period for which the licence has been renewed—
  - (i) as if the amount determined by [<sup>F248</sup>OFCOM] under subsection (6)(b) were an amount specified in a cash bid submitted by the licence holder, and
  - (ii) subject to any determination made under subsection (6)(c);
- (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a national licence is originally in force;
- (c) where [<sup>F248</sup>OFCOM] have determined a date under subsection (6)(a), they shall include in the licence as renewed a condition requiring a simulcast radio service to be broadcast in digital form throughout the period beginning with the date determined under subsection (6)(a) and ending with the date on which the licence (as renewed) is to expire; and
- (d) the reference in section 111(4) to the end of the period for which a national licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.

<sup>F252</sup>(10) .....

[ In the case of a pre-transfer national licence (including one for a period extended under <sup>F253</sup>(10A) section 253 of the Communications Act 2003)—

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

(11) In this section—

<sup>F254</sup> ...

“the relevant date”, in relation to a national licence, means the date which [<sup>F248</sup>OFCOM] determine to be that by which they would need to publish a notice under section 98(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the national service formerly provided under that licence.]

[<sup>F255</sup>(12) A determination for the purposes of subsection (11)—

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

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### Textual Amendments

- F241** S. 103A inserted (24.7.1996) by 1996 c. 55, **ss. 92**, 149(e) (with s. 43(1)(6))
- F242** Words in s. 103A(1) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 31(1)**, 47(2)(b)
- F243** Word in s. 103A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F244** Words in s. 103A(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F245** Words in s. 103A(3) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F246** S. 103A(3)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F247** Words in s. 103A(3)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F248** Words in s. 103A substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F249** S. 103A(4)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F250** S. 103A(7)(7A) substituted for s. 103A(7) (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F251** Words in s. 103A(8) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F252** S. 103A(10) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F253** S. 103A(10A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(8)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F254** Words in s. 103A(11) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F255** S. 103A(12) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(9)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### Modifications etc. (not altering text)

- C46** S. 103A(2) modified (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 18 para. 50(3)–(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C47** S. 103A(12) restricted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 18 para. 50(1),(2)(b),(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### [<sup>F256</sup>103B] Further renewal of national licences

- (1) A national licence may be renewed under this section on [<sup>F257</sup>two occasions] for a period of not more than 7 years [<sup>F258</sup>(on the first occasion) or 5 years (on the second occasion)] beginning with the date of renewal (“the renewal period”) (subject to the following provisions of this section).
- (2) Subsections (2) to (9), (11) and (12) of section 103A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 103A, subject to subsection (3).
- (3) Those provisions apply in relation to the renewal of a licence under this section as if the following were omitted—
  - (a) subsection (4)(b),
  - (b) in subsection (4)(c), the words from “or OFCOM” to the end,

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- (c) subsection (6)(a),
  - (d) subsection (8)(a), and
  - (e) subsection (9)(c).
- (4) Where OFCOM renew a licence under this section they must include in the licence as renewed a condition requiring the licence holder to do all that the licence holder can to secure the broadcasting of a simulcast radio service in digital form throughout the renewal period.]

#### Textual Amendments

- F256** S. 103B inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. **31(2)**, 47(2)(b) (with s. 31(3))
- F257** Words in s. 103B(1) substituted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **2(a)**
- F258** Words in s. 103B(1) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **2(b)**

### *Local and other services*

#### **104 Applications for other licences.**

- (1) Where [<sup>F259</sup>OFCOM] propose to grant a licence to provide a local service, they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they propose to grant such a licence;
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided;
  - (c) inviting applications for the licence and specifying the closing date for applications; and
  - (d) stating the fee payable on any application made in pursuance of the notice.
- (2) Any application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
- (a) the fee specified in the notice under paragraph (d) of that subsection;
  - (b) the applicant's proposals for providing a service that would—
    - (i) cater for the tastes and interests of persons living in the area or locality for which it would be provided or for any particular tastes and interests of such persons, and
    - (ii) broaden the range of programmes available by way of local services to persons living in that area or locality;
  - (c) such information as [<sup>F259</sup>OFCOM] may reasonably require—
    - (i) as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
    - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - (d) such other information as [<sup>F259</sup>OFCOM] may reasonably require for the purpose of considering the application.

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- (3) At any time after receiving such an application and before determining it [F259OFCOM] may require the applicant to furnish additional information under subsection (2)(b), (c) or (d).
- (4) [F259OFCOM] shall, at the request of any person and on the payment by him of such sum (if any) as [F259OFCOM] may reasonably require, make available for inspection by that person any information furnished under subsection (2)(b) by the applicants for a local licence.
- F260 (5) .....
- (6) [F261An application for a licence to provide a restricted service shall be made] in such manner as [F259OFCOM] may determine, and shall be accompanied by such fee (if any) as [F259OFCOM] may determine.
- (7) In this section and sections 105 and 106 “programme” does not include an advertisement.

#### Textual Amendments

- F259** Words in s. 104 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 45\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F260** S. 104(5)(6)(a) repealed (1.11.1996) by [1996 c. 55, ss. 94\(2\), 148\(2\), Sch. 11 Pt. I](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)
- F261** Words in s. 104(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 45\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

#### [F262] 104A Renewal of local licences.

- (1) A local licence may (subject to the following provisions of this section) be renewed [F263under this section] on one occasion for a period of [F264twelve] years beginning with the date of renewal.  
[ A local licence may be renewed under this section only if it is granted before the day F265(1A) on which section 104AA comes into force.]
- (2) No application for the renewal of a local licence under subsection (1) may be made before [F266OFCOM] first publish a notice pursuant to section 50(2) of the Broadcasting Act 1996 inviting applications for a licence to provide a relevant local radio multiplex service.
- (3) Subject to subsection (2), an application for the renewal of a local licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than [F267the day falling three months before] the relevant date.
- (4) The applicant must, in his application or at any time before the consideration of his application, nominate—
  - (a) a local digital sound programme service provided or to be provided by him, and
  - (b) a relevant local radio multiplex service,but may not nominate together a local digital sound programme service and a local radio multiplex service if another local licence held by him includes a condition in



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pursuance of subsection (12) relating to the broadcasting of that local digital sound programme service by that local radio multiplex service.

- (5) Where an application for the renewal of a local licence has been duly made to [F<sup>266</sup>OFCOM], they shall grant the application if—
- (a) they are satisfied that the applicant would, if his licence were renewed, provide a local service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section),<sup>F268</sup> ...
  - (b) the nominated local digital sound programme service provided by the applicant is being broadcast by means of the nominated local radio multiplex service.
  - [<sup>F269</sup>(c) they are satisfied that the period for which the nominated local digital sound programme service will be available for reception and the times at which it will be available will not be significantly different, week by week, from those for which and at which the licensed local service will be broadcast;]
- (6) Where the condition specified in subsection (5)(a) is satisfied, [F<sup>266</sup>OFCOM] may grant the application even though the condition specified in subsection (5)(b) is not satisfied if—
- (a) the applicant holds a licence to provide local digital sound programme services,
  - (b) a licence to provide the nominated local radio multiplex service has been awarded, and
  - (c) it appears to [F<sup>266</sup>OFCOM] that, under a contract between the applicant and the person to whom that licence has been awarded, the applicant is obliged to provide the nominated local digital sound programme service for broadcasting by means of the nominated local radio multiplex service.
- (7) [F<sup>266</sup>OFCOM] may in any case postpone consideration of the application until the relevant date.
- (8) If, at the relevant date, the condition specified in subsection (5)(b) is not satisfied, and any of the conditions specified in subsection (6) is not satisfied, [F<sup>266</sup>OFCOM] may postpone consideration of the application for such period not exceeding twelve months as they think appropriate.
- (9) Where [F<sup>266</sup>OFCOM] postpone consideration of an application under this section for any period beyond the relevant date (the “postponement period”), they shall extend the period for which the licence is in force by a period equal to the postponement period; and section 86(3) shall not limit the powers of [F<sup>266</sup>OFCOM] under this subsection.
- (10) On the grant of any application under this section [F<sup>266</sup>OFCOM] shall—
- (a) where the nominated local digital sound programme service provided by the applicant is not being broadcast by means of the nominated local radio multiplex service, determine a date by which that service must have begun to be so broadcast; and
  - (b) specify a fee payable to [F<sup>266</sup>OFCOM] in respect of the renewal.
- (11) Where [F<sup>266</sup>OFCOM] have granted a person’s application under this section they shall formally renew his licence as soon afterwards as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (10)(a), and

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(b) the renewal fee specified by them under subsection (10)(b),  
and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.

(12) Where [<sup>F266</sup>OFCOM] renew a licence under this section they shall include in the licence as renewed a condition requiring the licence holder to do all that he can to ensure that the nominated local digital sound programme service is broadcast by means of the nominated local radio multiplex service throughout the period beginning with whichever is the later of—

(a) the date on which the licence would expire if not renewed, and

(b) any date determined by them under subsection (10)(a),

and ending with the date on which the licence (as renewed) is to expire.

[<sup>F270</sup>In the case of a pre-transfer local licence (including one for a period extended under (12A) section 253 of the Communications Act 2003)—

(a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and

(b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a local licence granted by OFCOM under this Part after the radio transfer date.]

(13) In this section—

(a) “local digital sound programme service” has the same meaning as in Part II of the Broadcasting Act 1996;

(b) “nominated” means nominated by the applicant under subsection (4);

(c) “relevant date”, in relation to a local licence, means the date which [<sup>F266</sup>OFCOM] determine to be that by which they would need to publish a notice under section 104(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the local service formerly provided under that licence; and

(d) “relevant local radio multiplex service”, in relation to a local licence, means a local radio multiplex service (within the meaning of Part II of the Broadcasting Act 1996) with a coverage area which to a significant extent includes the coverage area of the local service provided under the local licence; and for this purpose “coverage area”, in relation to a service, has the meaning given by [<sup>F271</sup>paragraph 8(2) of Schedule 14 to the Communications Act 2003].]

[<sup>F272</sup>(14) A determination for the purposes of subsection (13)(c)—

(a) must be made at least one year before the date determined; and

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

#### Textual Amendments

**F262** Ss. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

**F263** Words in s. 104A(1) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), ss. 32(1)(a), 47(2)(b)

**F264** Word in s. 104A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 46(3) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F265** S. 104A(1A) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), ss. 32(1)(b), 47(2)(b)

**F266** Words in s. 104A substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 46(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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- F267** Words in s. 104A(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F268** Word in s. 104A(5)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F269** S. 104A(5)(c) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 254, 411(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F270** S. 104A(12A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(5)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F271** Words in s. 104A(13)(d) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F272** S. 104A(14) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C48** S. 104A(3) modified (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 18 para. 50(3)–(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C49** S. 104A(14) restricted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2) **Sch. 18 para. 50(1), (2)(c), (6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**[<sup>F273</sup>104A] Further renewal of local licences**

- (1) A local licence may be renewed under this section on [<sup>F274</sup>two occasions] for a period of not more than 7 years [<sup>F275</sup>(on the first occasion) or 5 years (on the second occasion)] beginning with the date of renewal (subject to the following provisions of this section and section 104AB).
- (2) A local licence may be renewed under this section only if—
  - (a) it has been renewed under section 104A, or
  - (b) it is granted on or after the day on which this section comes into force [<sup>F276</sup>and it is the first occasion on which the licence has been renewed under this section].
- (3) Subsections (3) to (12), (13) and (14) of section 104A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 104A, subject to subsections (4) and (5).
- (4) Section 104A(3) (as applied) has effect as if the words “Subject to subsection (2)” were omitted.
- (5) In the case of an approved licence, if an applicant for renewal of the licence under this section makes a national nomination in accordance with section 104AB, section 104A (as applied) has effect as if—
  - (a) subsections (4) and (13)(b) were omitted,
  - (b) references to the nominated local digital sound programme service were references to the national digital sound programme service nominated under section 104AB, and
  - (c) references to the nominated local radio multiplex service were references to the national radio multiplex service nominated under section 104AB.
- (6) In this section and sections 104AB and 104AC—
 

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

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

- (7) Before approving a licence for the purposes of this section, OFCOM must publish a document specifying—
- (a) the licence proposed to be approved, and
  - (b) a period in which representations may be made to OFCOM.

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#### Textual Amendments

- F273** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2)**, 47(2)(b) (with s. 32(3)(4))
- F274** Words in s. 104AA(1) substituted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **3(a)(i)**
- F275** Words in s. 104AA(1) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **3(a)(ii)**
- F276** Words in s. 104AA(2)(b) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **3(b)**

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

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

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#### Textual Amendments

- F273** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2)**, 47(2)(b) (with s. 32(3)(4))

### 104AC Variation of conditions relating to digital services

- (1) This section applies where—
- (a) a licence that is an approved licence has been renewed under section 104A and includes a local digital services condition,

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- (b) an application has been made under section 104AA for the renewal of another approved licence and the applicant has made a national nomination under section 104AB, and
  - (c) the nomination specifies the licence mentioned in paragraph (a) in accordance with section 104AB(4).
- (2) OFCOM may, if the requirements of subsections (3) and (4) are met, vary the licence mentioned in subsection (1)(a) by—
- (a) removing the local digital services condition, and
  - (b) adding a national digital services condition.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) OFCOM must be satisfied that, if they varied the licence, the programmes included in the nominated national digital sound programme service in each calendar month would include at least 80% of the programmes included in the service provided under that licence.
- (5) In this section—

“local digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that a local digital sound programme service is broadcast by means of a local radio multiplex service;

“national digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that the nominated national digital sound programme service is broadcast by means of the nominated national radio multiplex service until the day on which the licence (as renewed under section 104A) is to expire;

“nominated” means nominated in the nomination referred to in subsection (1)(b).]

#### Textual Amendments

**F273** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2)**, 47(2)(b) (with [s. 32\(3\)\(4\)](#))

### **104B** <sup>F277</sup> **Special application procedure for local licences.**

- (1) Where—
- (a) a local licence is due to expire (otherwise than by virtue of section 110), <sup>F278</sup>and]
  - <sup>F279</sup>(b) .....
  - (c) <sup>F280</sup>[OFCOM] propose to grant a further licence to provide the service in question,
- <sup>F280</sup>[OFCOM] may if they think fit publish a notice under subsection (2) instead of a notice under section 104(1).

<sup>F281</sup>(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date.]

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

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- (a) stating that [F280OFCOM] propose to grant a further licence to provide a specified local service,
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided,
  - (c) inviting declarations of intent to apply for a licence to provide the service,
  - (d) specifying the closing date for such declarations, and
  - (e) specifying—
    - (i) the application fee payable on any declaration made in pursuance of the notice, and
    - (ii) a deposit of such amount as [F280OFCOM] may think fit.
- (3) A declaration of intent made in pursuance of a notice under subsection (2) must be in writing and accompanied by the application fee and deposit specified under subsection (2)(e)(i) and (ii).
- (4) Where [F280OFCOM] receive a declaration of intent in accordance with the provisions of this section from a person other than the licence holder in relation to the service in question, they shall—
- (a) publish a notice under section 104(1),
  - (b) specify—
    - (i) in relation to persons who have made a declaration of intent in accordance with the provisions of this section, no further application fee, and
    - (ii) in relation to all other applicants, an application fee of the same amount as the fee referred to in subsection (2)(e)(i), and
  - (c) repay the deposit referred to in subsection (2)(e)(ii) to every person—
    - (i) who has made a declaration of intent in accordance with the provisions of this section, and
    - (ii) who duly submits an application in pursuance of the notice referred to in paragraph (a).
- (5) Where [F280OFCOM] receive a declaration of intent in accordance with the provisions of this section from the licence holder in relation to the service in question, and no such declaration from any other person, they shall—
- (a) invite the licence holder to apply for the licence in such manner as they may determine (but without requiring any further application fee), and
  - (b) on receiving an application duly made by him, repay to him the deposit referred to in subsection (2)(e)(ii).

F282(6) .....

F282(7) .....

#### Textual Amendments

**F277** S. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5. Sch. 2

**F278** Word in s. 104B(1)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 255(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F279** S. 104B(1)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 255(b), 411(2), Sch. 19(1) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)



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- F280** Words in s. 104B substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 47(2)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F281** S. 104B(1A) inserted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 47(3)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F282** S. 104B(6)(7) repealed (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

Where [<sup>F283</sup>OFCOM] have published a notice under section 104(1), they shall, in determining whether, or to whom, to grant the local licence in question, have regard to the following matters, namely—

- (a) the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
- (b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;
- (c) the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and
- [<sup>F284</sup>(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.]

### Textual Amendments

- F283** Words in s. 105 substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 48(2)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F284** S. 105(d) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 48(3)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

#### [<sup>F285</sup>105A] Variation of licence period following renewal

- (1) This section applies if the Secretary of State—
  - (a) has not nominated a date for digital switchover under section 97A for one or more relevant renewed services, or
  - (b) has withdrawn the nomination of such a date and has not nominated another such date under that section.
- (2) The Secretary of State may give notice to OFCOM fixing a date (the “termination date”) in relation to that service or such of those services as are specified or described in the notice.



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

#### Textual Amendments

**F285** S. 105A inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 33(2), 47(1) (with s. 33(4))

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

- (1) A national or local licence shall include such conditions as appear to <sup>F286</sup>[OFCOM] to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force <sup>F287</sup>....
- <sup>F288</sup>(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied—
- (a) that the departure would not substantially alter the character of the service;
  - (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
  - (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; <sup>F289</sup>...
  - (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure <sup>F290</sup>; or
  - (e) that, in the case of a local licence—
    - (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but
    - (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).]

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- (1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.]
- (2) A national or local licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable.
- (3) A national licence shall include conditions enabling [<sup>F286</sup>OFCOM], where it appears to them to be reasonably practicable for the licensed service to be provided for any additional area falling outside the minimum area determined by them in accordance with section 98(2), to require the licence holder to provide the licensed service for any such additional area.
- (4) Subject to subsection (5), [<sup>F286</sup>OFCOM] may, if they think fit, authorise the holder of a local licence, by means of a variation of his licence to that effect, to provide the licensed service for any additional area or locality adjoining the area or locality for which that service has previously been licensed to be provided.
- [<sup>F291</sup>(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them—
- (a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or
  - (b) that the increase that would result is justifiable in the exceptional circumstances of the case.]
- (6) As soon as practicable after [<sup>F292</sup>OFCOM] have exercised that power in relation to any service, they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they have exercised that power in relation to that service; and
  - (b) giving details of the additional area or locality for which that service is licensed to be provided.
- [<sup>F293</sup>(7) In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—
- (a) sound broadcasting services;
  - (b) radio licensable content services;
  - (c) additional services;
- but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question.]

#### Textual Amendments

**F286** Words in s. 106(1)–(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 49](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F287** Words in s. 106(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 312\(2\), 411\(2\), Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F288** S. 106(1A)(1B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 312\(3\), 411\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F289** Word in s. 106(1A)(c) repealed (8.6.2010) by [Digital Economy Act 2010 \(c. 24\), s. 47\(1\), Sch. 2](#)

**F290** S. 106(1A)(e) and word inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\), ss. 34\(1\), 47\(1\)](#)

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- F291** S. 106(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 312(4)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F292** Words in s. 106(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 49** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F293** S. 106(7) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 312(5)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## [<sup>F294</sup>106ZA] **Consultation about change of character of local services**

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

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### Textual Amendments

- F294** S. 106ZA inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 313**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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**F295 106A Variation of local licence following change of control.**

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**Textual Amendments**

**F295** Ss. 106A-108 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F295 107 Party political broadcasts.**

.....

**Textual Amendments**

**F295** Ss. 106A-108 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F295 108 Promotion of equal opportunities in relation to employment by holder of national licence.**

.....

**Textual Amendments**

**F295** Ss. 106A-108 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

*Enforcement of licences*

**109 Power to require scripts etc. or broadcasting of correction or [F296 a statement of findings].**

- (1) If [F297 OFCOM] are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by [F297 OFCOM] under or by virtue of any provision of this Part, they may serve on him a notice—
  - (a) stating that [F297 OFCOM] are so satisfied as respects any specified condition or direction;
  - (b) stating the effect of subsection (2); and
  - (c) specifying for the purposes of that subsection a period not exceeding twelve months.
- (2) If, at any time during the period specified in a notice under subsection (1), [F297 OFCOM] are satisfied that the licence holder has again failed to comply with any such condition or direction as is mentioned in that subsection (whether or not the same as the one specified in the notice), [F297 OFCOM] may direct him—

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- (a) to provide [<sup>F297</sup>OFCOM] in advance with such scripts and particulars of the programmes to be included in the licensed service as are specified in the direction; and
- (b) in relation to such of those programmes as will consist of or include recorded matter, to produce to [<sup>F297</sup>OFCOM] in advance for examination or reproduction such recordings of that matter as are so specified;
- and a direction under this subsection shall have effect for such period, not exceeding six months, as is specified in the direction.
- (3) If [<sup>F297</sup>OFCOM] are satisfied—
- (a) that the holder of a licence has failed to comply with any condition of the licence, and
- (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or [<sup>F296</sup>a statement of findings] (or both) under this subsection,
- they may (subject to subsection (4)) direct the licence holder to include in the licensed service a correction or [<sup>F296</sup>a statement of findings] (or both) in such form, and at such time or times, as they may determine.
- (4) [<sup>F297</sup>OFCOM] shall not give any person a direction under subsection (3) unless they have given him a reasonable opportunity of making representations to [<sup>F297</sup>OFCOM] about the matters complained of.
- (5) Where the holder of a licence includes a correction or [<sup>F296</sup>a statement of findings] in the licensed service in pursuance of a direction under subsection (3), he may announce that he is doing so in pursuance of such a direction.
- [<sup>F298</sup>(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.]

#### Textual Amendments

- F296** Words in s. 109 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 344(2)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F297** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 50** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F298** S. 109(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 344(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C50** S. 109 applied (with modifications) (1.10.1996) by [1996 c. 55](#), **ss. 62(10)**, 66(10) (with s. 43(1)(6)); [S.I. 1996/2120](#), art. 5, **Sch. 2**
- C51** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 250(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C52** S. 109(3) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, **Sch. para. 2(b)** (with art. 5)

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

- (1) If [<sup>F297</sup>OFCOM] are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to [<sup>F297</sup>OFCOM];
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years; or
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- [<sup>F299</sup>(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).
- (1B) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 5 per cent. of the qualifying revenue for his last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above.]
- (3) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of any other licence shall not exceed [<sup>F300</sup>£250,000].
- (4) [<sup>F297</sup>OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a), (b) or (c) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [<sup>F297</sup>OFCOM] may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (6) It is hereby declared that any exercise by [<sup>F297</sup>OFCOM] of their powers under subsection (1) of this section in respect of any failure to comply with any condition or direction shall not preclude any exercise by them of their powers under section 109 in respect of that failure.
- [<sup>F301</sup>(7) .....

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*Changes to legislation: Broadcasting Act 1990 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F297** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 50](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F299** S. 110(1A)-(1D) substituted for s. 110(2) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 7\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F300** Words in s. 110(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 7\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F301** S. 110(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

### Modifications etc. (not altering text)

- C51** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 250\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- C53** S. 110(1B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- C54** S. 110(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 3\(d\)](#) (with [art. 5](#))
- C55** S. 110(3): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## 111 Power to revoke licences.

- (1) If [<sup>F297</sup>OFCOM] are satisfied—
- that the holder of a licence granted under this Chapter is failing to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, and
  - that that failure is such that, if not remedied, it would justify the revocation of the licence,
- they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
- stating that [<sup>F297</sup>OFCOM] are satisfied as mentioned in subsection (1);
  - specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and
  - stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, [<sup>F297</sup>OFCOM] will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) [<sup>F297</sup>OFCOM] are satisfied—
- that the person on whom the notice was served has failed to take the steps specified in it, and
  - that it is necessary in the public interest to revoke his licence,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (4) If [<sup>F297</sup>OFCOM] are satisfied in the case of any national licence—
- that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and



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- (b) that it is appropriate for them to do so,  
 they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (5) If [<sup>F297</sup>OFCOM] are satisfied—
- (a) that the holder of a licence granted under this Chapter provided them, in connection with his application for the licence, with information which was false in a material particular, or
- (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,
- they may (subject to subsection (8)) serve on him a notice revoking his licence.
- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.
- (7) If it appears to [<sup>F297</sup>OFCOM] to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.
- (8) [<sup>F297</sup>OFCOM] shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

#### Textual Amendments

**F297** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 50](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

- C51** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 250\(3\), 411\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- C56** S. 111 modified (1.10.1996) by [1996 c. 55, s. 43\(5\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)  
 S. 111 applied (with modifications) (1.10.1996) by [1996 c. 55, ss. 62\(10\), 66\(10\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)  
 S. 111 applied (with modifications) (1.10.1996) by [1996 c. 55, s. 59\(8\)\(9\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)  
 S. 111 modified (1.10.1996) by [1996 c. 55, s. 66\(12\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)
- C57** S. 111(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 3\(e\)](#) (with art. 5)

#### [<sup>F302</sup>111A] Enforcement of licences held by BBC companies.

Where [<sup>F297</sup>OFCOM] —

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

[<sup>F297</sup>OFCOM] shall send a copy of the direction, notice or representations to the Secretary of State.]

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#### Textual Amendments

- F297** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 50](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F302** S. 111A inserted (24.7.1996) by [1996 c. 55, s. 136, 149\(1\)\(f\), Sch. 8 para. 7](#) (with s. 43(1)(6))

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

- C51** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 250\(3\), 411\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### [<sup>F303</sup> 111B] Power to suspend licence to provide satellite service.

- (1) If [<sup>F304</sup> OFCOM] are satisfied—
  - (a) that the holder of a licence to provide a [<sup>F305</sup> radio licensable content service] has included in the service one or more programmes containing material likely to encourage or incite to crime or to lead to disorder,
  - (b) that he has thereby failed to comply with the condition [<sup>F306</sup> which in compliance with section 263 of the Communications Act 2003 is included in the licence for the purpose of securing the objective mentioned in section 319(2)(b) of that Act, and]
  - (c) that the failure is such as to justify the revocation of the licence,they shall serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
  - (a) stating that [<sup>F304</sup> OFCOM] are satisfied as mentioned in subsection (1),
  - (b) specifying the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned in paragraph (b) of that subsection,
  - (c) stating that [<sup>F304</sup> OFCOM] may revoke his licence after the end of the period of twenty-one days beginning with the date on which the notice is served on the licence holder,
  - (d) informing the licence holder of his right to make representations to [<sup>F304</sup> OFCOM] within that period about the matters complained of, and
  - (e) suspending the licence as from the time when the notice is served on the licence holder until the revocation takes effect or [<sup>F304</sup> OFCOM] decide not to revoke the licence.
- (3) If [<sup>F304</sup> OFCOM], having considered any representations about the matters complained of made to them within the period referred to in subsection (2)(c) by the licence holder, are satisfied that it is necessary in the public interest to revoke the licence in question, they shall serve on the licence holder a notice revoking the licence.
- (4) A notice under subsection (3) shall not take effect until the end of the period of twenty-eight days beginning with the day on which that notice was served on the licence holder.
- (5) Section 111 shall not have effect in relation to the revocation of a licence in pursuance of a notice under subsection (1).]

#### Textual Amendments

- F303** S. 111B inserted (1.11.1996) by [1996 c. 55, s. 96](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)

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- F304** Words in s. 111B substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 51\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F305** Words in s. 111B(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 51\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F306** Words in s. 111B(1)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 51\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- C58** S. 111B applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 18 para. 45](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## CHAPTER III

### LICENSABLE SOUND PROGRAMME SERVICES

**F307** **112 Licensable sound programme services.**

.....

**Textual Amendments**

- F307** S. 112 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F308** **113 Licensing etc. of licensable sound programme services.**

.....

**Textual Amendments**

- F308** S. 113 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## CHAPTER IV

### ADDITIONAL SERVICES PROVIDED ON SOUND BROADCASTING FREQUENCIES

**114 Additional services.**

- (1) In this Part “additional service” means any service which consists in the sending of [<sup>F309</sup>electronic] signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any sound broadcasting service provided—[<sup>F310</sup>on a relevant frequency].
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be [<sup>F311</sup>any part of the signals which—
  - (a) is not required for the purposes of the sound broadcasting service for the purposes of which the frequency has been made available; and

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(b) is determined by OFCOM to be available for the provision of additional services;]

and references in this Part to spare capacity shall be construed accordingly.

[<sup>F312</sup>(2A) At any time while an additional services licence is in force, OFCOM may, if they consider it appropriate to do so, modify or further modify the determination made for the purposes of that licence under subsection (2)(b); and where there has been such a modification or further modification, the licence shall have effect accordingly.

(2B) A modification or further modification under subsection (2A) must not reduce the amount of spare capacity made available for the licensed services.]

(3) [<sup>F313</sup>OFCOM shall, when determining under subsection (2)] the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency on which a national service is provided, have regard to any need of the person providing that service to be able to use part of the signals carrying it for providing services which are ancillary to programmes included in the service.

(4) A person holding a national licence shall be taken for the purposes of this Part to be authorised by his licence to provide any such services as are mentioned in subsection (3).

<sup>F314</sup>(5) .....

[<sup>F315</sup>(6) In this section “electronic signal” means a signal within the meaning of section 32 of the Communications Act 2003.

(7) In this section and section 115 “relevant frequency” means a frequency made available by OFCOM for the purposes of a sound broadcasting service.]

#### Textual Amendments

**F309** Word in s. 114(1) substituted (25.7.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 52(2)(a)** (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/1900, art. 2(1), [Sch. 1](#)

**F310** Words in s114(1) substituted for s. 14(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 52(2)(b)** (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F311** S. 114(2)(a)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 52(3)** (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F312** S. 114(2A)(2B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 52(4)** (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F313** Words in s. 114(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 52(5)** (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F314** S. 114(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F315** S. 114(6)(7) substituted for s. 114(6) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 52(6)** (with [Sch. 17 para. 52\(7\)](#), [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

#### 115 Licensing of additional services.

(1) [<sup>F316</sup>OFCOM] shall do all that they can to secure that, in the case of each [<sup>F317</sup>relevant frequency], all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by [<sup>F316</sup>OFCOM] in accordance with this section.

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- (2) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.
- (3) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as [F316OFCOM] may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (4) Subsection (3) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act [F318] and who would not be in contravention of the requirements imposed by or under Schedule 14 to the Communications Act 2003 if he held such a licence].
- (5) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (3) as they apply in relation to the provision of such services by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.
- (6) Every licence to provide a national service shall include such conditions as appear to [F316OFCOM] to be appropriate for securing that the licence holder grants—
  - (a) to any person who holds a licence to provide additional services on the frequency on which that national service is provided, and
  - (b) to any person who is authorised by any such person as mentioned in subsection (3) to provide additional services on that frequency,
 access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.
- (7) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (6) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by [F316OFCOM].
- (8) The holder of a licence to provide a [F319]local or restricted service or to provide a radio licensable content service] shall be taken for the purposes of this Part to be authorised by his licence to provide, or to authorise another person to provide, additional services on the frequency on which the licensed service is provided.
- (9) In this Part “additional services licence” means a licence to provide additional services.

#### Textual Amendments

**F316** Words in s. 115 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F317** Words in s. 115(1) substituted for s. 115(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F318** Words in s. 115(4) inserted (18.9.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(4\)](#) (with [Sch. 18](#)); S.I. 2003/1900, art. 2(2), [Sch. 2](#)

**F319** Words in s. 115(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 53\(5\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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## 116 Applications for additional services licences.

- (1) Where [<sup>F320</sup>OFCOM] propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the period for which the licence is to be granted,
    - (ii) the sound broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (iii) <sup>F321</sup>... the extent and nature of the spare capacity which is to be allocated by the licence;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 118(1)(c) if he were granted the licence.
- (2) [<sup>F320</sup>OFCOM] may, if they think fit, specify under subsection (1)(d)(ii)—
  - (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
  - (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan indicating—
    - (i) the nature of any additional services which the applicant proposes to provide, and
    - (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 115(3);
  - (c) the applicant's cash bid in respect of the licence; and
  - (d) such information as [<sup>F320</sup>OFCOM] may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving such an application and before determining it [<sup>F320</sup>OFCOM] may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to [<sup>F320</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [<sup>F320</sup>OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and



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- (c) such other information connected with his application as [F320OFCOM] consider appropriate.

**Textual Amendments**

**F320** Words in s. 116 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 54\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F321** Words in s. 116(1)(b)(iii) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 54\(3\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

- (1) Where a person has made an application for an additional services licence in accordance with section 116, [F322OFCOM] shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—
  - [F323(a) that the technical plan submitted under section 116(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and]
  - (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;
 and any reference to an applicant in section 100 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to [F322OFCOM] that the requirements of paragraphs (a) and (b) above are satisfied.

[F324(2) .....

- (3) Subject to subsection (4), section 100 shall apply in relation to an additional services licence as it applies in relation to a national licence.
- (4) In the application of section 100 in relation to an additional services licence—
  - (a) subsection (6) shall have effect with the substitution in paragraph (a) of a reference to section 118(1) for the reference to section 102(1); and
  - (b) subsection (9) shall have effect with the substitution in paragraph (b) of a reference to the requirement specified in subsection (1)(a) above for the reference to the requirement specified in section 99(1)(a).
- (5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—
  - (a) that person indicates to [F322OFCOM] that none of the services in question will be provided once the licence has come into force, or
  - (b) [F322OFCOM] for any other reason have reasonable grounds for believing that none of those services will be so provided,
 then, subject to subsection (6)—
  - (i) [F322OFCOM] shall serve on him a notice revoking the licence as from the time the notice is served on him, and



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(ii) section 100 (as applied by subsection (3) above) shall, subject to section 100(11), have effect as if he had not made an application for the licence.

(6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless [F322OFCOM] have served on him a notice stating their grounds for believing that none of the services in question will be provided once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

F325(7) .....

#### Textual Amendments

- F322** Words in s. 117 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F323** S. 117(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F324** S. 117(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F325** S. 117(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) An additional services licence shall include conditions requiring the licence holder to pay to [F326OFCOM] (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 116(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
- (a) enabling [F326OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—

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- (a) authorising [F326OFCOM] to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

**Textual Amendments**

**F326** Words in s. 118 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 56](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) An additional services licence may include such conditions as [F327OFCOM] consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
- (a) the sound broadcasting service or services on whose frequency or frequencies it is provided, or
  - (b) any other wireless telegraphy transmissions.

<sup>F328</sup>(2) .....

**Textual Amendments**

**F327** Words in s. 119(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 57\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F328** S. 119(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 57\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**120 Enforcement of additional services licences.**

- (1) If [F329OFCOM] are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by [F329OFCOM] under or by virtue of any provision of this Part, they may (subject to subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to [F329OFCOM].

[F330(1A)] The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent. of the qualifying revenue for the licence holder’s last

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complete accounting period falling within the period for which his licence has been in force (“the relevant period”).

- (1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1C) Section 118(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.]
- (3) [F<sup>329</sup>OFCOM] shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Section 111 shall apply in relation to an additional services licence as it applies in relation to a licence granted under Chapter II of this Part, but with the omission of subsection (7).

#### Textual Amendments

**F329** Words in s. 120 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 58](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F330** S. 120(1A)-(1C) substituted for s. 120(2) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 8](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

**C59** S. 120(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 3\(f\)](#) (with art. 5)

## CHAPTER V

### SUPPLEMENTAL

#### 121 Computation of qualifying revenue.

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

#### F<sup>331</sup>122 Certain receipts of Authority to be paid into Consolidated Fund.

.....

#### Textual Amendments

**F331** Ss. 122-125 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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### <sup>F331</sup> 123 Frequency planning and general research and development.

.....

#### Textual Amendments

**F331** Ss. 122-125 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### <sup>F331</sup> 124 Authority to assist Secretary of State in connection with licensing functions under 1949 Act.

.....

#### Textual Amendments

**F331** Ss. 122-125 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### <sup>F331</sup> 125 Representation by Authority of Government and other interests in connection with broadcasting matters.

.....

#### Textual Amendments

**F331** Ss. 122-125 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## 126 Interpretation of Part III.

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

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

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

<sup>F332</sup>  
...

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

[<sup>F333</sup>“independent radio service” means a service falling to be regulated under section 245 of the Communications Act 2003;]

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

<sup>F332</sup>  
...

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

[<sup>F334</sup>“local service”, “national service” and “restricted service” each has the same meaning as in section 245 of the Communications Act 2003;

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“pre-transfer local licence” and “pre-transfer national licence” each has the same meaning as in section 253 of that Act;

“radio licensable content service” has the same meaning as in Part 3 of that Act;

“radio transfer date” has the same meaning as in that Act;]

[<sup>F335</sup>“simulcast radio service” means a simulcast radio service within the meaning given by section 41(2) of the Broadcasting Act 1996 for the purposes of Part 2 of that Act;]

“sound broadcasting service” means a broadcasting service whose broadcasts consist of transmissions in sound only [<sup>F336</sup>but does not include a radio multiplex service ] [<sup>F337</sup>(within the meaning of Part 3 of the Communications Act 2003)] ;

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

[<sup>F338</sup>(1A) For the purposes of this Part a simulcast radio service corresponds to a national service if, in accordance with section 41(3) of the Broadcasting Act 1996, it falls to be treated as so corresponding for the purposes of Part 2 of that Act.]

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

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

#### Textual Amendments

**F332** Words in s. 126(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F333** Words in s. 126(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 59\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F334** Words in s. 126(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 59\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F335** Words in s. 126(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 256\(2\)](#), 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F336** Words in s. 126 inserted (1.10.1996) by 1996 c. 55, s. 148(1), [Sch. 10 Pt. I para. 9](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)

**F337** Words in s. 126(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 59\(c\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F338** S. 126(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 256\(3\)](#), 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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## PART IV

### TRANSFER OF UNDERTAKINGS OF IBA AND CABLE AUTHORITY

#### *Transfer of undertakings*

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

- (1) On such day as the Secretary of State may by order appoint as the transfer date there shall come into force a scheme made under Schedule 9 to this Act and providing for the division of the property, rights and liabilities of the IBA between—
  - (a) the Commission,
  - (b) the Radio Authority, and
  - (c) a company nominated for the purposes of this subsection by the Secretary of State.
- (2) The Secretary of State may, by order made before the transfer date, nominate for the purposes of subsection (1) any company formed and registered under the <sup>M3</sup>Companies Act 1985; but on that date the company must be a company limited by shares which is wholly owned by the Crown.
- (3) Subject to subsection (4), the IBA shall continue in existence after the transfer date until such time as they are dissolved by order made by the Secretary of State.
- (4) On the transfer date the chairman and members of the IBA shall cease to hold office; and as from that date the IBA—
  - (a) shall consist only of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as the Secretary of State may appoint as members of the IBA; and
  - (b) shall have only the functions which fall to be carried out by the IBA under or by virtue of Schedule 9.
- (5) If requested to do so by the chairman appointed under subsection (4)(a), the Commission shall furnish the IBA with any assistance required by them for the purpose of carrying out any of those functions.
- (6) The Secretary of State shall not make an order under subsection (3) unless he is satisfied, after consultation with the IBA and with each of the bodies referred to in subsection (1)(a) to (c), that nothing further remains to be done by the IBA under or by virtue of Schedule 9.

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

**C60** S. 127(1): 1.1.1991 appointed as the transfer date for the purposes of s. 127(1) by S.I. 1990/2540, **art. 2**

#### **Marginal Citations**

**M3** 1985 c. 6.

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

(1) On the transfer date all the property, rights and liabilities to which the Cable Authority were entitled or subject immediately before that date shall become property, rights and liabilities of the Commission; and Schedule 10 to this Act shall have effect for the purpose of supplementing this and the following provisions of this section.

F339(2) .....

F339(3) .....

F339(4) .....

F339(5) .....

(6) References in this Part to property, rights and liabilities of the Cable Authority include references to property, rights and liabilities which are not capable of being transferred or assigned by the Authority.

### Textual Amendments

F339 S. 128(2)-(5) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 5 Group 19

### *Transitional arrangements*

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

(1) Schedule 11 to this Act shall have effect—

- (a) with respect to the provision by the Commission and the Welsh Authority, during the period beginning with the transfer date and ending with 31st December 1992, of television broadcasting services which have been provided by the IBA under the <sup>M4</sup>Broadcasting Act 1981 down to the transfer date;
- (b) for the purpose of the regulation by the Commission after the end of that period of services provided in succession to the DBS services provided by them during that period; and
- (c) in the case of local sound broadcasting services which have been provided by the IBA down to the transfer date—
  - (i) with respect to the provision of such services on and after that date by the Radio Authority, and
  - (ii) for the purpose of the regulation by that Authority on and after that date of services provided in succession to such services.

(2) The programmes provided by a programme contractor under his contract for inclusion in any broadcasting service provided by the Commission or the Radio Authority in accordance with Part II or IV of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission or the Radio Authority (as the case may be) but shall be transmitted—

- (a) by the nominated company in pursuance of a contract made between that company and the programme contractor in accordance with section 130, or
- (b) under arrangements made in accordance with subsection (3)(a) of that section in a case where any such contract made between a DBS programme contractor



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and that company is terminated by the contractor as mentioned in that provision.

- (3) The programmes broadcast on Channel 4 and S4C respectively during the interim period in accordance with Part II of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission but shall be transmitted by the nominated company—
- (a) in the case of the programmes broadcast on Channel 4, in pursuance of such a contract made between that company and the Channel 4 company as is mentioned in subsection (4), and
  - (b) in the case of the programmes broadcast on S4C, in pursuance of such a contract made between the nominated company and the Welsh Authority as is mentioned in subsection (6).
- (4) The contract referred to in subsection (3)(a) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on Channel 4 during that period, and in particular makes provision—
- (a) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company; and
  - (b) for the transmission of those programmes to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify.
- (5) The circumstances referred to in subsection (4)(b) are circumstances where the Commission consider it necessary to require the transmission of the programmes in question to be suspended in order for them to comply, or secure compliance, with the provisions of the <sup>M5</sup>Broadcasting Act 1981 (as it has effect in accordance with Part II of Schedule 11 to this Act) or with any restriction or requirement imposed thereunder.
- (6) The contract referred to in subsection (3)(b) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on S4C during that period, and in particular makes provision for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company.
- (7) In the following provisions, namely—
- (a) Parts II and IV of Schedule 11 to this Act, and
  - (b) any provision of the <sup>M6</sup>Broadcasting Act 1981 which is to be construed as referring to the Commission or to the Radio Authority by virtue of either of those Parts of that Schedule,
- any reference (however expressed) to the broadcasting of programmes, or to programmes broadcast, by the Commission or the Radio Authority shall, in consequence of subsections (2) and (3) above, be read as a reference to the broadcasting of programmes, or to programmes broadcast, by that body whether the transmission of the programmes is undertaken (according to the circumstances of the case)—
- (i) by, or under arrangements made by, that body, or
    - (ii) by the nominated company in pursuance of any such contract as is referred to in either of those subsections, or
    - (iii) under any such arrangements as are referred to in subsection (2)(b);

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and those Parts of that Schedule contain other modifications of provisions of that Act which are consequential on those subsections.

- (8) This section and section 130 shall have effect in relation to any teletext service provided by the Commission in accordance with Part II of Schedule 11 as if—
- (a) any reference to a programme or television programme were a reference to a teletext transmission; and
  - (b) any reference to a programme contractor were a reference to a teletext contractor.
- (9) This section and section 130 shall, in so far as they apply to the transmission of the programmes provided by a DBS programme contractor under his contract for inclusion in any DBS service provided by the Commission in accordance with Part II of Schedule 11, be construed as applying only to the carrying on of such activities in connection with the transmission of those programmes as were being so carried on by the IBA immediately before the transfer date.
- (10) In this section—
- “the Channel 4 company” means the body corporate referred to in section 12(2) of the Broadcasting Act 1981, and “on Channel 4” means in the additional broadcasting service referred to in section 10(1) of that Act, but excluding so much of that service as consisted, immediately before the transfer date, in the broadcasting of programmes for reception wholly or mainly in Wales;
  - “the interim period” means the period specified in subsection (1)(a) above;
  - “on S4C” has the same meaning as in Part I of this Act.
- (11) The reference in subsection (4) or (6) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date.

#### Marginal Citations

- M4** 1981 c. 68.
- M5** 1981 c. 68.
- M6** 1981 c. 68.

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

- (1) Subject to subsections (2) and (4), it shall be the duty of the IBA to make before the transfer date such variations of each contract between them and a programme contractor (“the programme contract”) as appear to them to be appropriate—
- (a) for requiring the programme contractor to enter into a contract with the nominated company which makes provision for and in connection with the transmission by that company during the interim period of the programmes which the programme contractor has the right and the duty to provide under the programme contract, and in particular makes provision—
    - (i) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company,

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- (ii) for the transmission of those programmes to be suspended, if the relevant authority so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify, and
  - (iii) where the programme contractor is a TV programme contractor, for the consideration payable in respect of the transmission of those programmes to be payable in accordance with subsection (6); and
  - (b) for securing that the right and the duty of the programme contractor under the programme contract to provide those programmes is accordingly (so long as any such contract with the nominated company remains in force) a right and a duty to provide them for transmission by that company.
- (2) Subsection (1) shall apply to a contract for the provision of television programmes for broadcasting in a DBS service (“a DBS programme contract”) as if—
- (a) the reference to coverage in paragraph (a)(i) were omitted; and
  - (b) for paragraph (a)(iii) there were substituted—
    - “(iii) for the programme contractor to be entitled to terminate the contract if he is notified by the Commission that they are satisfied that the standards referred to in sub-paragraph (i) are not being attained as mentioned in that sub-paragraph;”.
- (3) The IBA shall, in the case of any DBS programme contract, make before the transfer date such variations of the contract as appear to them to be appropriate—
- (a) for requiring the DBS programme contractor, if he terminates his contract with the nominated company under any provision included in the contract in consequence of subsection (2)(b), to make such arrangements as the Commission may approve for and in connection with the transmission during the interim period of the programmes which he has the right and the duty to provide under the DBS programme contract, being arrangements under which—
    - (i) specified standards relating to technical quality and reliability are to be attained in connection with the transmission of those programmes under the arrangements, and
    - (ii) the transmission of those programmes is to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify; and
  - (b) for securing that the right and the duty of the programme contractor under the DBS programme contract to provide those programmes is accordingly (so long as any such arrangements remain in force) a right and a duty to provide them for transmission under the arrangements.
- (4) Subsection (1) shall apply to a contract for the provision of local sound broadcasts as if the reference to the interim period were a reference to the remainder of the period for which the contract continues in force by virtue of paragraph 2(1) in Part IV of Schedule 11; and that subsection accordingly does not apply to any such contract if—
- (a) the programme contractor notifies the IBA, before such date as they shall determine, that he proposes to request the Radio Authority to determine the contract as from the transfer date in accordance with paragraph 1(1) in Part V of that Schedule; or

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- (b) the contract is one to which paragraph 2(1) in that Part of that Schedule would apply on the transfer date.
- (5) The circumstances referred to in paragraph (a)(ii) of subsection (1) or (3) are circumstances where the relevant authority or (as the case may be) the Commission consider it necessary to require the transmission of the programmes in question to be suspended—
- (a) in order for them to comply, or secure compliance, with the provisions of the <sup>M7</sup>Broadcasting Act 1981 (as it has effect in accordance with Schedule 11 to this Act) or with any restriction or requirement imposed thereunder, or
- (b) in view of any matter which they consider constitutes or would constitute a breach of the programme contractor’s contract.
- (6) The IBA shall make before the transfer date such variations of each contract between them and a TV programme contractor as appear to them to be appropriate for requiring the programme contractor to enter into an agreement with all of the other TV programme contractors which—
- (a) relates to the payment by those contractors to the nominated company of the consideration payable by them in respect of the transmission by that company of the programmes provided by them; and
- (b) provides for the amounts payable by each of the contractors to be such proportion of the total consideration so payable as corresponds to the proportion of the relevant amount which he was liable to pay by virtue of section 32(1)(a) of the Broadcasting Act 1981 (rental payments) in respect of the period beginning with 1st April 1990 and ending with the transfer date; and in paragraph (b) “the relevant amount” means the aggregate amount of all payments falling to be made by TV programme contractors by virtue of section 32(1)(a) of that Act in respect of that period (excluding any payments falling to be so made in consequence of section 13(2) of that Act (advertisements on Channel 4)).
- (7) The IBA shall, in the case of each such contract as is mentioned in subsection (6), also make before the transfer date such variations of the contract as appear to them to be appropriate in consequence of section 129(3).
- (8) In this section—
- “the interim period” means the period specified in section 129(1)(a);
- “the relevant authority”—
- (a) in relation to any such contract as is mentioned in subsection (1)(a) which relates to the transmission of television programmes, means the Commission, and
- (b) in relation to any such contract which relates to the transmission of local sound broadcasts, means the Radio Authority;
- and section 129(8) and (9) apply for the purposes of this section.
- (9) Any reference in subsection (1) or (3) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date; and different standards may be so specified for the purposes of subsection (1) in relation to programme contractors of different descriptions.

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**Marginal Citations**

M7 1981 c. 68.

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

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

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

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

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

- (1) It shall be the duty of the IBA to prepare before the transfer date, in the case of each relevant programme contractor, a contract which—
  - (a) is expressed to be made between the nominated company and the contractor; and

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- (b) is to come into force in accordance with subsection (3) at such time (if any) as the contractor becomes the holder of a local licence by virtue of paragraph 1(1) in Part V of Schedule 11 to this Act; and
  - (c) makes provision in connection with the transmission, as from any such time, of the programmes included in the local service provided by the contractor (as the holder of such a licence), which may include provision for the transmission of those programmes by the nominated company.
- (2) For the purposes of subsection (1) the IBA shall, after consultation with all the relevant programme contractors, draw up a number of different standard forms of contract, and each contract prepared by them under that subsection shall be in such one of those forms as they may determine after consultation with the relevant programme contractor concerned.
- (3) Any contract prepared under subsection (1) shall by virtue of this subsection come into force, as a contract between the nominated company and the relevant programme contractor concerned, at any such time as is mentioned in paragraph (b) of that subsection and (subject to the provisions of the contract) shall continue in force for such period as is specified in it, being a period expiring not later than 31st December 1994.
- (4) If—
  - (a) any contract prepared under subsection (1) has not yet come into force, and
  - (b) the nominated company and the relevant programme contractor concerned agree that it would be more appropriate for them to be parties to a contract which is in one of the other forms of contract drawn up as mentioned in subsection (2), and
  - (c) the nominated company prepares such a contract as is mentioned in subsection (1) which is in that other form,subsection (3) shall have effect in relation to that contract as if it had been prepared by the IBA under subsection (1) (and accordingly shall not have effect in relation to the contract referred to in paragraph (a) above).
- (5) The IBA shall be deemed to have had power to impose such requirements as have been imposed by them on the various local sound programme contractors with respect to the making of payments to the IBA for the purpose of enabling reductions to be made in relevant charges; and in this subsection “relevant charges” means charges made by the nominated company in connection with the transmission, during the period beginning with the transfer date and ending with 31st December 1994, of programmes which are included in local services falling within any description of such services determined by the IBA.
- (6) The IBA shall have power, with the approval of the Secretary of State—
  - (a) to dispose of, or of an interest in, any relevant assets to a relevant programme contractor; and
  - (b) to do so on such terms and for such consideration as they may determine (whether or not any such consideration represents the market value of the assets).
- (7) In this section—
  - “local licence” and “local service” have the same meaning as in Part III of this Act;

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

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

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

**<sup>F340</sup>134 Transitional arrangements relating to existing cable services.**

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**Textual Amendments**

**F340** S. 134 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

*Provisions relating to nominated company*

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

- (1) As a consequence of the vesting in the nominated company, in accordance with the scheme made under Schedule 9 to this Act, of property, rights and liabilities of the IBA, that company shall issue to the Secretary of State such securities of the company as he may from time to time direct.
- (2) The Secretary of State shall not give a direction under subsection (1) at a time when the nominated company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued at such time or times, and (subject to subsection (4)) on such terms, as the Secretary of State may direct.
- (4) Any shares issued in pursuance of this section—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of [<sup>F341</sup>the Companies Act 2006] as if they had been paid up by virtue of the payment to the nominated company of their nominal value in cash.
- (5) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued to him in pursuance of this section, without the consent of the Treasury.
- (6) Without prejudice to the generality of section 198(2), any dividends or other sums received by the Secretary of State in right of or on the disposal of any securities acquired by virtue of this section shall be paid into the Consolidated Fund.



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### Textual Amendments

**F341** Words in s. 135(4)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 119\(2\)](#) (with art. 10)

## 136 Exercise of functions through nominees.

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

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

- (1) As soon as he considers it expedient, and in any case not later than six months after the nominated company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the aggregate of the shares for the time being held in the company, under or by virtue of any enactment, by any Minister of the Crown or any nominee of his (“the Government shareholding”).
- (2) The target investment limit for the Government shareholding in the company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (“the ordinary voting rights”).
- (3) The first target investment limit fixed under this section for the Government shareholding in the company shall be equal to the proportion of the ordinary voting rights which is in fact carried by the Government shareholding in the company at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in the company in place of the one previously in force under this section; but—
  - (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of a Minister of the Crown so to exercise—
  - (a) any power to dispose of any shares held in the company under or by virtue of any enactment, and
  - (b) his power to give directions to any nominee of his,as to secure that the Government shareholding in the company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5), a Minister of the Crown may take up, or direct any nominee of his to take up, any rights for the time being available to him, or to the nominee, as an existing holder of shares or other securities of the company; but if,

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as a result, the proportion of the ordinary voting rights carried by the Government shareholding in the company at any time exceeds the target investment limit for the time being in force under this section, it shall be the duty of that Minister to comply with subsection (5) as soon after that time as is reasonably practicable.

- (7) References in this section to a Minister of the Crown include references to the Treasury; and for the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 138 Reserves of nominated company.

- (1) If the Secretary of State so directs at any time before the nominated company ceases to be wholly owned by the Crown, such sums as may be specified in the direction shall, instead of being applied in any other way, be carried by the company to a reserve (“the statutory reserve”).
- (2) The statutory reserve may only be applied by the nominated company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2), the statutory reserve shall not count as an undistributable reserve of the nominated company for the purposes of [F342section 831(4)(d) of the Companies Act 2006] (restriction on distribution of assets); but, for the purpose of determining under that section whether the nominated company may make a distribution at any time, any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of [F343section 831(4)(c)] as if it were unrealised profits of the company.

#### Textual Amendments

**F342** Words in s. 138(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 175\(a\)](#) (with arts. 6, 11, 12)

**F343** Words in s. 138(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 175\(b\)](#) (with arts. 6, 11, 12)

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

- (1) As from the transfer date the Secretary of State may, with the consent of the Treasury, make loans to the nominated company out of money provided by Parliament; but no loan shall be made by him under this section at a time when the company has ceased to be wholly owned by the Crown.
- (2) The aggregate amount outstanding in respect of the principal of loans made by the Secretary of State under this section shall not exceed the limit specified in subsection (3).
- (3) That limit is £20 million or such greater sum, not exceeding £100 million, as the Secretary of State may from time to time specify by order made with the consent of the Treasury.

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- (4) Any loan made by the Secretary of State under this section shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.
- (5) An order shall not be made by the Secretary of State under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

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

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

#### *General*

#### **141 Interpretation of Part IV.**

- (1) In this Part—
  - “the Commission” means the Independent Television Commission;
  - “debentures” includes debenture stock;
  - “the IBA” means the Independent Broadcasting Authority;
  - “the nominated company” means the company nominated for the purposes of section 127(1);
  - “securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;
  - “shares” includes stock;
  - “subsidiary” has the meaning given by [F344section 1159 of the Companies Act 2006];
  - “the transfer date” means the day appointed under section 127(1).
- (2) Other expressions used in this Part which are also used in the <sup>M8</sup>Broadcasting Act 1981 have the same meaning as in that Act.
- (3) The nominated company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when each of the issued shares in the company is held by, or by a nominee of, the Secretary of State.

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#### Textual Amendments

**F344** Words in s. 141(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 119(3)** (with art. 10)

#### Marginal Citations

**M8** 1981 c. 68.

### F345 **PART V**

#### THE BROADCASTING COMPLAINTS COMMISSION

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#### Textual Amendments

**F345** Ss.142-150 repealed (1.4.1997) by [1996 c. 55, ss.148\(2\), 149\(2\)](#), **Sch. 11 Pt. I** (with s. 43(1)(6)); [S.I. 1997/1005, art. 4](#)

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

**C61** [Pt. V](#) (ss. 142–150) modified by [S.I. 1990/2579, art. 2\(2\)](#)

### F346 **PART VI**

#### THE BROADCASTING STANDARDS COUNCIL

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#### Textual Amendments

**F346** Ss. 151-161 repealed (1.4.1997) by [1996 c. 55, ss. 148\(2\), 149\(2\)](#), **Sch. 11 Pt. I** (with s. 43(1)(6)); [S.I. 1997/1005, art. 4](#)

### **PART VII**

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

##### *Obscenity*

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

- (1) In section 1 of the <sup>M9</sup>Obscene Publications Act 1959 (test of obscenity)—
- (a) the proviso to subsection (3) (exemption for television and sound broadcasting) shall cease to have effect; and
  - (b) the following subsections shall be added after that subsection—

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- “(4) For the purposes of this Act a person also publishes an article to the extent that any matter recorded on it is included by him in a programme included in a programme service.
- (5) Where the inclusion of any matter in a programme so included would, if that matter were recorded matter, constitute the publication of an obscene article for the purposes of this Act by virtue of subsection (4) above, this Act shall have effect in relation to the inclusion of that matter in that programme as if it were recorded matter.
- (6) In this section “programme” and “programme service” have the same meaning as in the Broadcasting Act 1990.”
- (2) Schedule 15 to this Act shall have effect for the purpose of supplementing subsection (1) above.

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**Marginal Citations**

**M9** 1959 c. 66.

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

- (1) Section 51 of the <sup>M10</sup>Civic Government (Scotland) Act 1982 (offences of displaying, publishing, etc. of obscene material) shall be amended in accordance with the following provisions of this section.
- (2) After subsection (2) there shall be inserted the following subsection—
- “(2A) Subject to subsection (4) below, any person who—
- (a) is responsible for the inclusion of any obscene material in a programme included in a programme service; or
- (b) with a view to its eventual inclusion in a programme so included, makes, prints, has or keeps any obscene material,
- shall be guilty of an offence under this section.”
- (3) In subsection (6), paragraph (a) shall cease to have effect.
- (4) In subsection (8)—
- (a) in the definition of “material”, the words from “and” onwards shall be omitted;
- (b) after the definition of “prescribed sum” there shall be inserted—
- ““programme” and “programme service” have the same meaning as in the Broadcasting Act 1990;” and
- (c) the word “showing,” shall be omitted.

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**Marginal Citations**

**M10** 1982 c. 45.

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*Racially inflammatory material etc.*

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

- (1) Part III of the <sup>M11</sup>Public Order Act 1986 (racial hatred) shall be amended as follows.
- (2) In each of the following provisions, namely—
  - (a) section 18(6) (exemption from prohibition applying to use of threatening words etc.),
  - (b) section 20(3)(c) (exemption from prohibition applying to public performances of plays), and
  - (c) section 21(4) (exemption from prohibition applying to distribution etc. of recordings),
 for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”.
- (3) In section 22 (broadcasting or including programme in cable programme service)—
  - (a) in subsections (1), (3)(b), (4)(a) and (5)(a), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “included in a programme service”; and
  - (b) the following provisions shall be omitted, namely—
    - (i) in subsection (2), the words “broadcasting or cable”,
    - (ii) in subsections (4)(b) and (5)(b), the words “broadcast or”, wherever occurring,
    - (iii) subsection (7) (exemption for programmes broadcast by BBC or Independent Broadcasting Authority), and
    - (iv) subsection (8) (application of certain provisions of the <sup>M12</sup>Cable and Broadcasting Act 1984).
- (4) In section 23 (possession of racially inflammatory material)—
  - (a) in subsection (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “or included in a programme service”;
  - (b) in subsection (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “or inclusion in a programme service”; and
  - (c) subsection (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.
- (5) In section 29 (interpretation)—
  - (a) the definitions of “broadcast” and “cable programme service” shall be omitted;
  - (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”; and
  - (c) the following definition shall be inserted after that definition—
 

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

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#### Marginal Citations

- M11 1986 c. 64.  
M12 1984 c. 46.

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

- (1) Part III of the <sup>M13</sup>Public Order (Northern Ireland) Order 1987 (stirring up hatred or arousing fear) shall be amended as follows.
- (2) In each of the following provisions, namely—
  - (a) Article 9(5) (exemption from prohibition applying to use of threatening words etc.), and
  - (b) Article 11(4) (exemption from prohibition applying to distribution etc. of recordings),for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”.
- (3) In Article 12 (broadcasting or including programme in cable programme service)—
  - (a) in paragraphs (1), (3)(b), (4)(a) and (5)(a), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “included in a programme service”; and
  - (b) the following provisions shall be omitted—
    - (i) in paragraph (2)(a), the words “broadcasting or cable”,
    - (ii) in paragraphs (4)(b) and (5)(b), the words “broadcast or”, wherever occurring,
    - (iii) paragraph (7) (exemption for programmes broadcast by BBC or Independent Broadcasting Authority), and
    - (iv) paragraph (8) (application of certain provisions of <sup>M14</sup>Cable and Broadcasting Act 1984).
- (4) In Article 13 (possession of matter intended or likely to stir up hatred or arouse fear)—
  - (a) in paragraph (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “or included in a programme service”
  - (b) in paragraph (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “or inclusion in a programme service” and
  - (c) paragraph (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.
- (5) In Article 17 (interpretation)—
  - (a) the definitions of “broadcast” and “cable programme service” shall be omitted;
  - (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”; and
  - (c) the following definition shall be inserted after that definition—

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



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#### Marginal Citations

- M13** S.I.1987/463 (N.I.7).  
**M14** 1984 c. 46.

### *Defamation*

#### 166 Defamatory material.

- (1) For the purposes of the law of libel and slander <sup>F347</sup>... the publication of words in the course of any programme included in a programme service shall be treated as publication in permanent form.
- (2) Subsection (1) above shall apply for the purposes of section 3 of each of the Defamation Acts (slander of title etc.) as it applies for the purposes of the law of libel and slander.
- (3) <sup>F348</sup> .....
- (4) In this section “the Defamation Acts” means the <sup>M15</sup>Defamation Act 1952 and the <sup>M16</sup>Defamation Act (Northern Ireland) 1955.
- (5) Subsections (1) and (2) above do not extend to Scotland.

#### Textual Amendments

- F347** Words in s. 166 repealed (12.1.2010) by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(2\)\(e\)\(viii\)](#), [Sch. 23 Pt. 2](#) (with s. 180)
- F348** S. 166(3) repealed (4.9.1996 for specified purposes, 1.4.1999 for specified purposes, 28.2.2000 for E.W. insofar as not already in force, 31.3.2001 for S., 6.1.2010 for N.I. in so far as not already in force) by [Defamation Act 1996 \(c. 31\), ss. 16, 19\(2\)](#), [Sch. 2](#); [S.I. 1999/817, art. 2\(b\)](#); [S.I. 2000/222, art. 3\(b\)](#); [S.S.I. 2001/98, art. 3](#); [S.I. 2009/2858, art. 3\(d\)](#)

#### Marginal Citations

- M15** 1952 c. 66.  
**M16** 1955 c. 11 (N.I.).

### *Supplementary*

#### 167 Power to make copies of recordings.

- (1) If a justice of the peace is satisfied by information on oath laid by a constable that there is reasonable ground for suspecting that a relevant offence has been committed by any person in respect of a programme included in a programme service, he may make an order authorising any constable to require that person—
  - (a) to produce to the constable a visual or sound recording of any matter included in that programme, if and so far as that person is able to do so; and
  - (b) on the production of such a recording, to afford the constable an opportunity of causing a copy of it to be made.

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- (2) An order made under this section shall describe the programme to which it relates in a manner sufficient to enable that programme to be identified.
- (3) A person who without reasonable excuse fails to comply with any requirement of a constable made by virtue of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- (4) No order shall be made under this section in respect of any recording in respect of which a warrant could be granted under any of the following provisions, namely—
  - (a) section 3 of the <sup>M17</sup>Obscene Publications Act 1959;
  - (b) section 24 [<sup>F349</sup>or 29H] of the <sup>M18</sup>Public Order Act 1986; and
  - (c) Article 14 of the <sup>M19</sup>Public Order (Northern Ireland) Order 1987.
- (5) In the application of subsection (1) to England and Wales “relevant offence” means an offence under—
  - (a) section 2 of the Obscene Publications Act 1959; or
  - (b) section 22 [<sup>F350</sup>or 29F] of the Public Order Act 1986.
- (6) In the application of subsection (1) to Scotland—
  - (a) “relevant offence” means an offence under—
    - (i) section 51 of the <sup>M20</sup>Civic Government (Scotland) Act 1982, or
    - (ii) section 22 of the Public Order Act 1986;
  - (b) the reference to a justice of the peace shall include a reference to the sheriff; and
  - (c) for the reference to information on oath there shall be substituted a reference to evidence on oath.
- (7) In the application of subsection (1) to Northern Ireland—
  - (a) “relevant offence” means an offence under Article 12 of the Public Order (Northern Ireland) Order 1987;
  - (b) for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate; and
  - (c) for the reference to information on oath laid by a constable there shall be substituted a reference to a complaint on oath made by a constable.

#### Textual Amendments

**F349** Words in s. 167(4)(b) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 28\(2\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(1)

**F350** Words in s. 167(5)(b) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 28\(3\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(1)

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

**C72** S. 167 amended (1.4.1997) by [1996 c. 55, s. 117](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1997/1005, [art. 4](#)

#### Marginal Citations

**M17** 1959 c. 66.

**M18** 1986 c. 64.

**M19** S.I.1987/463 (N.I.7).

**M20** 1982 c. 45.

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## PART VIII

### PROVISIONS RELATING TO WIRELESS TELEGRAPHY

**F351 168 Offence of keeping wireless telegraphy station or apparatus available for unauthorised use.**

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**Textual Amendments**

**F351** Ss. 168-174 repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with **Sch. 8 Pt. 1**)

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

- C73** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**
- C74** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**
- C75** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**; amendment to earlier affecting provision [SI 2003/3196 \(27.2.2004\)](#) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), arts. 1(1), 6(1), **Sch. 2**

**F351 169 Offence of allowing premises to be used for purpose of unlawful broadcasting.**

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**Textual Amendments**

**F351** Ss. 168-174 repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with **Sch. 8 Pt. 1**)

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

- C74** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**
- C75** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**; amendment to earlier affecting provision [SI 2003/3196 \(27.2.2004\)](#) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), arts. 1(1), 6(1), **Sch. 2**
- C76** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**

**F351 170 Prohibition of acts facilitating unauthorised broadcasting.**

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**Textual Amendments**

**F351** Ss. 168-174 repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with **Sch. 8 Pt. 1**)

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

- C74** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**
- C75** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**; amendment to earlier affecting provision SI 2003/3196 (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), arts. 1(1), 6(1), **Sch. 2**
- C77** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**

<sup>F351</sup>**171 Amendments of the Marine, &c., Broadcasting (Offences) Act 1967.**

.....

**Textual Amendments**

- F351** Ss. 168-174 repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with [Sch. 8 Pt. 1](#))

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

- C74** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**
- C75** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**; amendment to earlier affecting provision SI 2003/3196 (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), arts. 1(1), 6(1), **Sch. 2**
- C78** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**

<sup>F351</sup>**172 Amendments of provisions of 1949 Act relating to penalties and forfeiture.**

.....

**Textual Amendments**

- F351** Ss. 168-174 repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with [Sch. 8 Pt. 1](#))

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

- C74** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**
- C75** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**; amendment to earlier affecting provision SI 2003/3196 (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), arts. 1(1), 6(1), **Sch. 2**
- C79** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**

<sup>F351</sup>**173 Extension of search and seizure powers in relation to unlawful broadcasting etc.**

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#### Textual Amendments

**F351** Ss. 168-174 repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with [Sch. 8 Pt. 1](#))

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

**C74** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**

**C75** Ss. 168-173 extended (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), arts. 1, 3(2), **Sch. Pt. II**; amendment to earlier affecting provision [SI 2003/3196 \(27.2.2004\)](#) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), arts. 1(1), 6(1), **Sch. 2**

**C80** Ss. 168-173 extended (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(2), **Sch. Pt. II**

### <sup>F351</sup>**174 Application of Part VIII to Isle of Man and Channel Islands.**

.....

#### Textual Amendments

**F351** Ss. 168-174 repealed (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 9 Pt. 1** (with [Sch. 8 Pt. 1](#))

## PART IX

### COPYRIGHT AND RELATED MATTERS

#### **175 Use as of right of sound recordings in broadcasts and cable programme services.**

(1) In Chapter VII of Part I of the <sup>M21</sup>Copyright, Designs and Patents Act 1988 (copyright licensing) there shall be inserted after section 135—

*“ Use as of right of sound recordings in broadcasts and cable programme services*

##### **135A Circumstances in which right available.**

(1) Section 135C applies to the inclusion in a broadcast or cable programme service of any sound recordings if—

- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so,
- (b) the condition in subsection (2) or (3) applies, and
- (c) the person including those recordings in the broadcast or cable programme service has complied with section 135B.

(2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence—

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- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and
  - (b) allowing unlimited needletime or such needletime as he has demanded.
- (3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).
- (4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.
- (5) In the group of sections from this section to section 135G—
- “needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;
  - “sound recording” does not include a film sound track when accompanying a film.
- (6) In sections 135B to 135G, “terms of payment” means terms as to payment for including sound recordings in a broadcast or cable programme service.

### **135B Notice of intention to exercise right.**

- (1) A person intending to avail himself of the right conferred by section 135C must—
- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
  - (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.
- (2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).
- (3) Before the person intending to avail himself of the right begins to exercise it, he must—
- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and
  - (b) apply to the Tribunal under section 135D to settle the terms of payment.

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### **135C Conditions for exercise of right.**

- (1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who—
  - (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings,
  - (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require, and
  - (c) makes the payments to the licensing body that are required by this section,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made—
  - (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or
  - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).
- (4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

### **135D Applications to settle payments.**

- (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

### **135E References etc. about conditions, information and other terms.**

- (1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal—
  - (a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or



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- (b) any question whether any information is information which the licensing body can reasonably require him to provide.
- (2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

### **135F Application for review of order.**

- (1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.
- (2) An application shall not be made, except with the special leave of the Tribunal—
- (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

### **135G Factors to be taken into account.**

- (1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall—
- (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and
  - (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.
- (2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.
- (3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.”
- (2) In section 149 of that Act (jurisdiction of the Copyright Tribunal), after paragraph (c) there shall be inserted—
- “(cc) section 135D or 135E (application or reference with respect to use as of right of sound recordings in broadcasts or cable programme services);”.
- (3) In section 179 of that Act (index of defined expressions)—

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- (a) in the appropriate places in alphabetical order there shall be inserted—  
     “needletime section 135A”, and  
     “terms of payment section 135A”, and  
 (b) in the entry for sound recordings, for “section 5” there shall be substituted “sections 5 and 135A”.

**Marginal Citations**

**M21** 1988 c. 48.

**176 Duty to provide advance information about programmes.**

- (1) A person providing a programme service to which this section applies must make available in accordance with this section information relating to the programmes to be included in the service to any person (referred to in this section and Schedule 17 to this Act as “the publisher”) wishing to publish in the United Kingdom any such information.
- (2) The duty imposed by subsection (1) is to make available information as to the titles of the programmes which are to be, or may be, included in the service on any date, and the time of their inclusion, to any publisher who has asked the person providing the programme service to make such information available to him and reasonably requires it.
- (3) Information to be made available to a publisher under this section is to be made available as soon after it has been prepared as is reasonably practicable but, in any event—  
 (a) not later than when it is made available to any other publisher, and  
 (b) in the case of information in respect of all the programmes to be included in the service in any period of seven days, not later than the beginning of the preceding period of fourteen days, or such other number of days as may be prescribed by the Secretary of State by order.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The duty imposed by subsection (1) is not satisfied by providing the information on terms, other than terms as to copyright, prohibiting or restricting publication in the United Kingdom by the publisher.
- (6) Schedule 17 applies to any information or future information which the person providing a programme service to which this section applies is or may be required to make available under this section.
- (7) For the purposes of this section and that Schedule, the following table shows the programme services to which the section and Schedule apply and the persons who provide them or are to be treated as providing them.

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**Programme service**

**Provider of service**

*Services other than services under the Act*

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Television and national radio services provided by the BBC for reception in the United Kingdom      The BBC

***Services under the Act***

Television programme services subject to <sup>F352</sup>regulation by OFCOM]      The person licensed to provide the service

[<sup>F353</sup>The public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003)]      The Authority

Any national service (see [<sup>F354</sup>section 126(1)] ) subject to regulation by [<sup>F355</sup>OFCOM][<sup>F356</sup>, any simulcast radio service (within the meaning of Part II of the Broadcasting Act 1996), and any national digital sound programme service (within the meaning of that Part of that Act) subject to regulation by [<sup>F355</sup>OFCOM]]      The person licensed to provide the service

***Services provided during interim period only***

Television broadcasting services provided by the Independent Television Commission in accordance with Schedule 11, other than Channel 4      The programme contractor

Channel 4, as so provided      The body corporate referred to in section 12(2) of the Broadcasting Act 1981

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(8) This section does not require any information to be given about any advertisement.

**Textual Amendments**

- F352** Words in s. 176(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 60(a) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F353** Words in s. 176(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 60(b) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F354** Words in s. 176(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 60(c) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F355** Words in s. 176(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 60(d) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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## PART X

### MISCELLANEOUS AND GENERAL

#### *Foreign satellite services*

#### 177 Orders proscribing unacceptable foreign satellite services.

- (1) Subject to the following provisions of this section, the Secretary of State may make an order proscribing a foreign satellite service for the purposes of section 178.
- (2) If [<sup>F357</sup>OFCOM consider that the quality of any ] foreign satellite service which is brought to their attention is unacceptable and that the service should be the subject of an order under this section, they shall notify to the Secretary of State details of the service and their reasons why they consider such an order should be made.
- (3) [<sup>F358</sup>OFCOM] shall not consider a foreign satellite service to be unacceptable for the purposes of subsection (2) unless they are satisfied that there is repeatedly contained in programmes included in the service matter which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling.
- (4) Where the Secretary of State has been notified under subsection (2), he shall not make an order under this section unless he is satisfied that the making of the order—
  - (a) is in the public interest; and
  - (b) is compatible with any international obligations of the United Kingdom.
- (5) An order under this section—
  - (a) may make such provision for the purpose of identifying a particular foreign satellite service as the Secretary of State thinks fit; and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F359</sup>(6) In this section and section 178—
  - [<sup>F360</sup>“foreign satellite service” means—
    - (a) a service which is provided by a person who is not for the purposes of [<sup>F361</sup>the Audiovisual Media Services Directive] under the jurisdiction of the United Kingdom and which consists wholly or mainly in the transmission by satellite of television programmes which are capable of being received in the United Kingdom, or
    - (b) a service which consists wholly or mainly in the transmission by satellite from a place outside the United Kingdom of sound programmes which are capable of being received in the United Kingdom;]

[<sup>F362</sup> ...]

#### Textual Amendments

**F357** Words in s. 177(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 61\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F358** Words in s. 177(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 61\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F359** S. 177(6) substituted (11.7.1997) by [S.I. 1997/1682, reg. 2, Sch. para. 13](#)

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**F360** S. 177(6): definition of “foreign satellite service” substituted (30.12.1998) by S.I. 1998/3196, reg. 2, **Sch. para. 5**

**F361** Words in s. 177(6) substituted (18.8.2010) by The Audiovisual Media Services (Codification) Regulations 2010 (S.I. 2010/1883), regs. 1, 2

**F362** Words in s. 177(6) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 61(4), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

**C81** S. 177: transfer of functions (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 1 para. 6** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## **178 Offence of supporting proscribed foreign satellite services.**

- (1) This section applies to any foreign satellite service which is proscribed for the purposes of this section by virtue of an order under section 177; and references in this section to a proscribed service are references to any such service.
- (2) Any person who in the United Kingdom does any of the acts specified in subsection (3) shall be guilty of an offence.
- (3) Those acts are—
  - (a) supplying any equipment or other goods for use in connection with the operation or day-to-day running of a proscribed service;
  - (b) supplying, or offering to supply, programme material to be included in any programme transmitted in the provision of a proscribed service;
  - (c) arranging for, or inviting, any other person to supply programme material to be so included;
  - (d) advertising, by means of programmes transmitted in the provision of a proscribed service, goods supplied by him or services provided by him;
  - (e) publishing the times or other details of any programmes which are to be transmitted in the provision of a proscribed service or (otherwise than by publishing such details) publishing an advertisement of matter calculated to promote a proscribed service (whether directly or indirectly);
  - (f) supplying or offering to supply any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of programmes transmitted in the provision of a proscribed service.
- (4) In any proceedings against a person for an offence under this section, it is a defence for him to prove that he did not know, and had no reasonable cause to suspect, that the service in connection with which the act was done was a proscribed service.
- (5) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (6) For the purposes of this section a person exposing decoding equipment for supply or having such equipment in his possession for supply shall be deemed to offer to supply it.

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- (7) Section 46 of the <sup>M22</sup>Consumer Protection Act 1987 shall have effect for the purpose of construing references in this section to the supply of any thing as it has effect for the purpose of construing references in that Act to the supply of any goods.
- (8) In this section “programme material” includes—
- (a) a film (within the meaning of Part I of the <sup>M23</sup>Copyright, Designs and Patents Act 1988);
  - (b) any other recording; and
  - (c) any advertisement or other advertising material.

**Marginal Citations**

**M22** 1987 c. 43.

**M23** 1988 c. 48.

*Unauthorised decoders*

**179 Unauthorised decoders for encrypted services etc.**

<sup>F363</sup>(1) .....

- (2) In section 299 of the Act of 1988 (fraudulent reception of programmes broadcast from countries or territories outside the United Kingdom)—
- (a) subsection (2) shall cease to have effect; and
  - (b) in subsection (5), after “297” there shall be inserted “, 297A ”.

**Textual Amendments**

**F363** S. 179(1) repealed (28.5.2000) by S.I. 2000/1175, art. 4

*Television licensing*

<sup>F364</sup>**180 Transfer to BBC of functions connected with television licences.**

.....

**Textual Amendments**

**F364** S. 180 repealed (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(2), Sch. 21 para. 2

<sup>F365</sup>**181 Certain apparatus to be deemed to be apparatus for wireless telegraphy.**

.....

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**Textual Amendments**

**F365** S. 181 repealed (1.4.2004) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 4\(2\)](#), [Sch. 2](#) (with art. 11)

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

**C82** S. 181 modified (temp.) (8.12.2003) by [The Office of Communications Act 2002 \(Commencement No. 3\) and Communications Act 2003 \(Commencement No. 2\) Order 2003 \(S.I. 2003/3142\)](#), [art. 10\(3\)](#) (with art. 11)

*Listed events*

<sup>F366</sup>**182** .

**Textual Amendments**

**F366** S. 182 repealed (1.10.1996) by [1996 c. 55, ss. 105\(2\), 148\(2\)](#), [Sch. 11 Pt. I](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120, art. 4](#), [Sch. 1](#)

*Gaelic television programmes*

**183 Financing of programmes in Gaelic out of Gaelic Television Fund.**

[<sup>F367</sup>(1) The Scottish Ministers must, for each financial year, pay to OFCOM such amount as they may determine to be appropriate for the purposes of this section.]

(2) Any amount received by [<sup>F368</sup>OFCOM] under subsection (1) shall be carried by them to the credit of a fund established [<sup>F369</sup>by the Independent Television Commission under this section and] known as the [<sup>F370</sup>Gaelic Broadcasting Fund] (and any such amount shall accordingly not be regarded as forming part of the revenues of [<sup>F368</sup>OFCOM]).

(3) The Fund shall be under the management of a body established for the purposes of this section <sup>F371</sup> ...

<sup>F372</sup>(3A) .....

[<sup>F373</sup>(3B) The functions of the Service shall be to secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available to persons in Scotland.

(4A) In carrying out their functions, the Service may finance, or engage in, any of the following—

- (a) the making of programmes in Gaelic with a view to those programmes being broadcast or otherwise transmitted so as to be available to persons in Scotland;
- (b) the provision of training for persons employed, or to be employed, in connection with the making of programmes in Gaelic to be so broadcast or otherwise transmitted;
- (c) research into the types of programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast or otherwise transmitted.



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(4B) But the Service are not to be entitled, for the purpose of carrying out their functions, to provide—

- (a) a Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;
- (d) a national sound broadcasting service;
- (e) a national digital sound programme service; or
- (f) a television multiplex service or a radio multiplex service.]

(5) When making any grant out of the Fund in pursuance of subsection (4) the Committee may impose such conditions as they think fit, including conditions requiring the grant to be repaid in specified circumstances.

<sup>F374</sup>(6) .....

<sup>F374</sup>(7) .....

<sup>F375</sup>(8) .....

[<sup>F376</sup>(9) In this section, section 183A and Schedule 19—

“Channel 3 service”, “Channel 4” and “Channel 5” each has the same meaning as in Part 1;

“national digital sound programme service” has the same meaning as in Part 2 of the Broadcasting Act 1996;

“national sound broadcasting service” means a sound broadcasting service within the meaning of Part 3 which, under subsection (4)(a) of section 245 of the Communications Act 2003, is a national service for the purposes of that section;

“Gaelic” means the Gaelic language as spoken in Scotland;

“programme” includes any item included in a programme service;

“radio multiplex service” has the same meaning as in Part 2 of the Broadcasting Act 1996;

“the Service” means the body established under subsection (3) and known as Seirbheis nam Meadhanan Gàidhlig (the Gaelic Media Service);

“television multiplex service” has the meaning given by section 241(1) of the Communications Act 2003 to a multiplex service within the meaning of Part 1 of the Broadcasting Act 1996;

and a reference to being available to persons in Scotland includes a reference to being available both to persons in Scotland and to others.]

#### Textual Amendments

**F367** S. 183(1) substituted (31.10.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 17(2)**, 44(5); S.I. 2012/2516, art. 2(c)

**F368** Words in s. 183 substituted (with effect in accordance with Sch. 15 para. 62(4)(a) of the amending Act) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 62(2)** (with Sch. 15 para. 62(4)(b), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F369** Words in s. 183(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 62(3)** (with Sch. 15 para. 62(4)(b), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F370** Words in s. 183(2) substituted (1.4.1997) by 1996 c. 55, **s. 95(2)**; S.I. 1997/1005, **art. 4**

**F371** Words in s. 183(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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- F372** S. 183(3A) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F373** S. 183(3B)-(4B) substituted for s. 183(4) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 208\(3\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F374** S. 183(6)(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F375** S. 183(8) omitted (31.10.2012) by virtue of [Scotland Act 2012 \(c. 11\)](#), [ss. 17\(3\)](#), 44(5); [S.I. 2012/2516](#), art. 2(c)
- F376** S. 183(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 208\(4\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C83** S. 183: transfer of functions to the Scottish Ministers (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 2, [Sch. 1](#); [S.I. 1998/3178](#)
- C84** S. 183: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 7](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

[<sup>F377</sup> **183A Membership of the Gaelic Media Service**

- (1) The Service shall consist of not more than twelve members.
- (2) The members of the Service are to be appointed by OFCOM
- (3) OFCOM must appoint one of the members to be the chairman of the Service.
- (4) The approval of [<sup>F378</sup>the Scottish Ministers] is required for the appointment of a person as a member of the Service, and for the appointment of a member as their chairman.
- (5) The members of the Service must include—
  - (a) a member nominated by the BBC;
  - (b) a member nominated by Highlands and Islands Enterprise; and
  - (c) a member nominated by [<sup>F379</sup>Bòrd na Gàidhlig].
- (6) When appointing members of the Service, OFCOM must have regard to—
  - (a) the desirability of having members of the Service who are proficient in written and spoken Gaelic; and
  - (b) any guidance issued by [<sup>F380</sup>the Scottish Ministers] for the purposes of this section.
- (7) OFCOM must secure, so far as practicable, that the membership of the Service is such that the interests of each of the following are adequately represented—
  - <sup>F381</sup>(a) .....
  - <sup>F381</sup>(b) .....
  - (c) the independent television and radio production industries in Scotland;
  - (d) other persons and bodies concerned with the promotion and use of the Gaelic language, including those concerned with education in Gaelic and in Gaelic culture.
- (8) Schedule 19 to this Act shall have effect with respect to the Service.
- (9) In this section—

[<sup>F382</sup>“Bòrd na Gàidhlig” means the body of that name established by section 1 of the Gaelic Language (Scotland) Act 2005]

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“regional Channel 3 service” has the same meaning as in Part 1.

- F383(10) .....
- F383(11)] .....

**Textual Amendments**

**F377** S. 183A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 209**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F378** Words in s. 183A(4) substituted (23.5.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 54(1)(a)**, 72(7)

**F379** Words in s. 183A(5)(c) substituted (31.3.2006) by [The Gaelic Language \(Scotland\) Act 2005 \(Consequential Modifications\) Order 2006 \(S.I. 2006/241\)](#), arts. 1, **2(2)**

**F380** Words in s. 183A(6)(b) substituted (23.5.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 54(1)(b)**, 72(7)

**F381** S. 183A(7)(a)(b) repealed (22.6.2011) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 29(2), 47(3)(b), **Sch. 2**; S.I. 2011/1170, art. 2

**F382** Words in s. 183A(9) substituted (31.3.2006) by [The Gaelic Language \(Scotland\) Act 2005 \(Consequential Modifications\) Order 2006 \(S.I. 2006/241\)](#), arts. 1, **2(3)**

**F383** S. 183A(10)(11) omitted (31.3.2006) by virtue of [The Gaelic Language \(Scotland\) Act 2005 \(Consequential Modifications\) Order 2006 \(S.I. 2006/241\)](#), arts. 1, **2(4)**

**F384 184 Broadcasting of programmes in Gaelic on Channel 3 in Scotland.**

.....

**Textual Amendments**

**F384** S. 184 repealed (22.6.2011) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 29(1), 47(3)(b), **Sch. 2**; S.I. 2011/1170, art. 2

*National television archive*

**185 Contributions towards maintenance of national television archive.**

- (1) [F385OFCOM] shall, for the financial year which includes the commencement of this section and each subsequent financial year, determine an aggregate amount which they consider it would be appropriate for the holders of Channel 3 [F386, Channel 4 ] and Channel 5 licences to contribute, in accordance with this section, towards the expenses incurred by the nominated body in connection with the maintenance by it of a national television archive.
- (2) In this section “the nominated body” means such body as may for the time being be nominated by [F385OFCOM] for the purposes of this section, being a body which—
  - F387(a) .....
  - (b) appears to [F385OFCOM] to be in a position to maintain a national television archive.
- (3) A Channel 3 [F388, Channel 4 ] or Channel 5 licence shall include conditions requiring the licence holder to pay to [F385OFCOM] , in respect of each of the financial years mentioned in subsection (1), such amount as they may notify to him for the purposes of this section, being such proportion of the aggregate amount determined for that year

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under that subsection as they consider appropriate (and different proportions may be determined in relation to different persons).

(4) Any amount received by [<sup>F385</sup>OFCOM] by virtue of subsection (3) shall be transmitted by them to the nominated body.

(5) In this section—

<sup>F389</sup>  
...

“Channel 3 licence” and “Channel 5 licence” have the same meaning as in Part I of this Act.

[<sup>F390</sup>“Channel 4 licence” means—

- (a) the licence referred to in section 231(1)(b) of the Communications Act 2003; and
- (b) a licence renewing that licence on the first or any subsequent occasion.]

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**Textual Amendments**

**F385** Words in s. 185 substituted (with effect in accordance with Sch. 15 para. 64(2) of the amending Act) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 64(1)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F386** Words in s. 185(1) inserted (with effect in accordance with s. 297(4) of the amending Act) by Communications Act 2003 (c. 21), **ss. 297(2)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F387** S. 185(2)(a) omitted (1.6.2014) by virtue of The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 (S.I. 2014/1372), reg. 1, **Sch. para. 11**

**F388** Words in s. 185(3) inserted (with effect in accordance with s. 297(4) of the amending Act) by Communications Act 2003 (c. 21), **ss. 297(2)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F389** Words in s. 185(5) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 64(1)(b), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F390** Words in s. 185(5) inserted (with effect in accordance with s. 297(4) of the amending Act) by Communications Act 2003 (c. 21), **ss. 297(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

**C85** S. 185: transfer of functions (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 1 para. 8** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Duties of BBC as respects independent productions*

<sup>F391</sup>**186 Duty of BBC to include independent productions in their television services.**

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**Textual Amendments**

**F391** S. 186 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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**187 Information to be furnished by BBC for purposes of reports under section 186.**

- F392(1) .....
- F392(2) .....
- F393(3) .....

**Textual Amendments**

**F392** S. 187(1)(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F393** S. 187(3) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 24\(6\)\(b\)](#), **Sch. 26**; [S.I. 2003/766](#), art. 2, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

*Power to give directions relating to international obligations*

**188 Power to give broadcasting bodies etc. directions relating to international obligations.**

- (1) A body to which this section applies shall carry out any functions which the Secretary of State may by order direct them to carry out for the purpose of enabling Her Majesty’s Government in the United Kingdom to give effect to any international obligations of the United Kingdom.
- (2) This section applies to—
  - (a) the BBC;
  - F394(b) .....
  - (c) the Welsh Authority;
  - F395(d) .....
  - F395(e) .....
- (3) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F394** S. 188(2)(b) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F395** S. 188(2)(d)(e) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

*Matters relating to telecommunication systems*

F396 **189 Sharing of apparatus by operators of telecommunication systems.**

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**Textual Amendments**

**F396** Ss. 189-191 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**<sup>F396</sup>190 Modification of certain references in Telecom- munications Act licences.**

.....

.....

**Textual Amendments**

**F396** Ss. 189-191 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**<sup>F396</sup>191 Revocation of class licence to run broadcast relay systems.**

.....

.....

**Textual Amendments**

**F396** Ss. 189-191 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Application of competition legislation*

**<sup>F397</sup>192 Application of provisions of Fair Trading Act 1973 to broadcasting and telecommunication services.**

.....

.....

**Textual Amendments**

**F397** S. 192 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

**<sup>F398</sup>193 Modification of networking arrangements in consequence of competition legislation**

- (1) Where [<sup>F399</sup>the relevant authority] makes a relevant order, the order may also provide for the modification of any networking arrangements to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) “relevant order” means—
  - (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—

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- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of programmes for broadcasting in regional Channel 3 services; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of such programmes; or
  - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [<sup>F400</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of programmes for broadcasting in regional Channel 3 services.
- [<sup>F401</sup>(2A) In subsection (1), “relevant authority” means—
- (a) in relation to a relevant order falling within subsection (2)(a), the [<sup>F402</sup>Competition and Markets Authority] or (as the case may be) the Secretary of State;
  - (b) in relation to a relevant order falling within subsection (2)(b), the [<sup>F402</sup>Competition and Markets Authority], the Secretary of State or (as the case may be) OFCOM.]
- (3) Expressions used in subsection (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.
- (4) In this section —
- “networking arrangements” means any such arrangements as are mentioned in [<sup>F403</sup>section 290(4) of the Communications Act 2003]; and
  - “regional Channel 3 service” has the meaning given by section 14(6) above.]

#### Textual Amendments

- F398** S. 193 substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 9 para. 6**; S.I. 2003/1397, art. 2(1), Sch.
- F399** Words in s. 193(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 65(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F400** Words in s. 193(2)(b) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 71(a)** (with art. 3)
- F401** S. 193(2A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 65(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F402** Words in s. 193(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 71(b)** (with art. 3)
- F403** Words in s. 193(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 65(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C86** S. 193(2)(a) extended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 1(1), **Sch. 4 para. 9**



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### Textual Amendments

**F404** S. 194 repealed (1.3.2000) by S.I. 2000/311, art. 26(2)

## [<sup>F405</sup>194] **Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.**

- (1) In this section a “relevant agreement” means an agreement—
- (a) which is made between all holders of regional Channel 3 licences for securing the appointment by them, in accordance with conditions included in their licences by virtue of [<sup>F406</sup>section 280 of the Communications Act 2003], of a single body corporate to be the appointed news provider for the purposes of [<sup>F407</sup>that section], or
  - (b) which is made between them and the body corporate appointed to be the appointed news provider for the purposes of [<sup>F407</sup>that section] for purposes connected with the appointment.

[ If, having sought the advice of the [<sup>F409</sup>CMA][<sup>F410</sup>and OFCOM], it appears to the  
<sup>F408</sup>(2) Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.

- (3) The conditions are that—
- (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
    - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of [<sup>F411</sup>section 280 of the Communications Act 2003], or
    - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of [<sup>F412</sup>that section of that Act of 2003].
- (4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—
- (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
  - (c) make a declaration, even though he has notified the [<sup>F413</sup>CMA][<sup>F414</sup>or OFCOM or both of them] of his intention not to do so.
- (6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the [<sup>F413</sup>CMA][<sup>F415</sup>and OFCOM] of his decision.

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- (7) <sup>F416</sup>Neither the <sup>F413</sup>CMA] nor OFCOM may] exercise any Chapter III powers in respect of a relevant agreement, unless—
- <sup>F417</sup>(a) the Secretary of State has been notified by the <sup>F413</sup>CMA] or (as the case may be) by OFCOM of its or their intention to do so; and]
- (b) the Secretary of State—
- (i) has notified the <sup>F413</sup>CMA][<sup>F418</sup>and OFCOM] that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or
- (ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) <sup>F419</sup>Where the <sup>F413</sup>CMA] or OFCOM is or are proposing to exercise any Chapter III powers in respect of a relevant agreement, it or they must give the Secretary of State particulars of the agreement and such other information—
- (a) it considers or (as the case may be) they consider will assist] the Secretary of State to decide whether to exercise his powers under this section; or
- (b) as the Secretary of State may request.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
- “Chapter III powers” means the powers <sup>F420</sup>of the <sup>F421</sup>CMA] and of OFCOM under] Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;
- <sup>F422</sup>“CMA” means the Competition and Markets Authority;]
- <sup>F423</sup>...
- <sup>F424</sup>.....
- “regional Channel 3 licence” has the same meaning as in Part I;
- and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.]]

#### Textual Amendments

**F405** Shoulder heading and s. 194A inserted (24.7.1996) by 1996 c. 55, s. 77(1)(2) (with s. 43(1)(6))

**F406** Words in s. 194A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(2)(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F407** Words in s. 194A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(2)(b), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F408** S. 194A(2)-(11) substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b), Sch. 2 Pt. III para. 4(2); S.I. 2000/344, art. 2, Sch.

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- F409** Word in s. 194A(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(2)** (with art. 3)
- F410** Words in s. 194A(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F411** Words in s. 194A(3)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(4)(a)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F412** Words in s. 194A(3)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(4)(b)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F413** Word in s. 194A(5)-(8) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(2)** (with art. 3)
- F414** Words in s. 194A(5)(c) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(5)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F415** Words in s. 194A(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F416** Words in s. 194A(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(6)(a)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F417** S. 194A(7)(a) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(6)(b)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F418** Words in s. 194A(7)(b)(i) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F419** Words in s. 194A(8) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(7)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F420** Words in s. 194A(9) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(8)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F421** Word in s. 194A(9) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(3)(a)** (with art. 3)
- F422** Words in s. 194A(9) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(3)(c)** (with art. 3)
- F423** Words in s. 194A(9) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(3)(b)** (with art. 3)
- F424** Words in s. 194A(9) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 24(7)(d) (i), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### General

#### 195 Offences by bodies corporate.

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

## 196 Entry and search of premises.

- (1) If a justice of the peace is satisfied by information on oath—
- (a) that there is reasonable ground for suspecting that an offence under section 13<sup>F425</sup> ... or 97 has been or is being committed on any premises specified in the information, and
  - (b) that evidence of the commission of the offence is to be found on those premises,

he may grant a search warrant conferring power on any person or persons authorised in that behalf by [<sup>F426</sup>OFCOM] to enter and search the premises specified in the information at any time within one month from the date of the warrant.

<sup>F427</sup>(2) .....

- (3) A person who intentionally obstructs a person in the exercise of powers conferred on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (4) A person who discloses, otherwise than for the purposes of any legal proceedings or of a report of any such proceedings, any information obtained by means of an exercise of powers conferred by this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (5) In the application of this section to Scotland, for the reference to a justice of the peace there shall be substituted a reference to the sheriff and for any reference to information on oath there shall be substituted a reference to evidence on oath.
- (6) In the application of this section to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate and for any reference to information on oath there shall be substituted a reference to a complaint on oath.

### Textual Amendments

**F425** Words in s. 196(1)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F426** Words in s. 196(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 66\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F427** S. 196(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 66\(3\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### Modifications etc. (not altering text)

**C87** S. 196(1): transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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<sup>F428</sup>**197 Restriction on disclosure of information.**

.....

**Textual Amendments**

**F428** S. 197 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**198 Financial provisions.**

- (1) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

**199 Notices.**

- <sup>F429</sup>(1) .....
- <sup>F429</sup>(2) .....
- <sup>F429</sup>(3) .....
- <sup>F429</sup>(4) .....
- (5) Any notice served [<sup>F430</sup>by OFCOM under section 21, 41, 42, 55, [<sup>F431</sup> 97B,] 103, [<sup>F432</sup>105A,] 109, 110, 111 or 120] shall be published in such manner as that body consider appropriate, and shall be so published as soon as reasonably practicable after it is served.
- <sup>F433</sup>(6) .....

**Textual Amendments**

**F429** S. 199(1)-(4) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F430** Words in s. 199(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 67](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F431** Word in s. 199(5) inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 30\(3\)](#), 47(2)(b)

**F432** Word in s. 199(5) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 33\(3\)](#), 47(1)

**F433** S. 199(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**200 Regulations and orders.**

- (1) Any power of the Secretary of State to make regulations or an order under this Act shall be exercisable by statutory instrument.
- (2) Any regulations or order made by the Secretary of State under this Act may make—
  - (a) different provision for different cases; and

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- (b) such supplemental, incidental, consequential or transitional provision or savings as the Secretary of State considers appropriate.

## 201 Programme services.

(1) In this Act “programme service” means any of the following services (whether or not it is, or it requires to be, licensed <sup>F434</sup>...), namely—

- [<sup>F435</sup>(aa) any service which is a programme service within the meaning of the Communications Act 2003;]
- (c) any other service which consists in the sending, by means of [<sup>F436</sup>an electronic communications network (within the meaning of the Communications Act 2003)] , of sounds or visual images or both either—
- (i) for reception at two or more places in the United Kingdom (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or
- (ii) for reception at a place in the United Kingdom for the purpose of being presented there to members of the public or to any group of persons.

[<sup>F437</sup>(2A) Subsection (1)(c) does not apply to so much of a service consisting only of sound programmes as—

- (a) is a two-way service (within the meaning of section 248(4) of the Communications Act 2003);
- (b) satisfies the conditions in section 248(5) of that Act; or
- (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 248(7) of that Act.

(2B) Subsection (1)(c) does not apply to so much of a service not consisting only of sound programmes as—

- (a) is a two-way service (within the meaning of section 232 of the Communications Act 2003);
- (b) satisfies the conditions in section 233(5) of that Act; or
- (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 233(7) of that Act.]

### Textual Amendments

**F434** Words in s. 201(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F435** S. 201(1)(aa) substituted for s. 201(1)(a)-(bb) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 360\(1\)\(a\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F436** Words in s. 201(1)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 360\(1\)\(b\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F437** S. 201(2A)(2B) substituted for s. 201(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 360\(2\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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## 202 General interpretation.

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

“advertising agent” shall be construed in accordance with subsection (7);  
[<sup>F438</sup>“the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services]

“the BBC” means the British Broadcasting Corporation;

[<sup>F439</sup>“a BBC company” means—

- (a) any body corporate which is controlled by the BBC, or
- (b) any body corporate in which the BBC or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]

“body”, without more, means a body of persons whether incorporated or not, and includes a partnership;

“broadcast” means broadcast by wireless telegraphy;

[<sup>F440</sup>“a Channel 4 company” means—

- (a) any body corporate which is controlled by the Channel Four Television Corporation, or
- (b) any body corporate in which the Corporation or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]

“connected”, in relation to any [<sup>F441</sup>person], shall be construed in accordance with paragraph 3 in Part I of Schedule 2;

“control”, in relation to a body, has the meaning given by paragraph 1(1) in that Part of that Schedule;

“dwelling-house” includes a hotel, inn, boarding-house or other similar establishment;

[<sup>F442</sup>“EEA Agreement” and “EEA State” have the meaning given by Schedule 1 to the Interpretation Act 1978;]

<sup>F442</sup>  
...

“financial year” shall be construed in accordance with subsection (2);

“frequency” includes frequency band;

“modifications” includes additions, alterations and omissions;

[<sup>F443</sup>“OFCOM” means the Office of Communications;]

[<sup>F443</sup>“pension scheme” means a scheme for the payment of pensions, allowances or gratuities;]

[<sup>F444</sup>“product placement” has the meaning given by paragraph 1 of Schedule 11A to the Communications Act 2003;]

“programme” includes an advertisement and, in relation to any service, includes any item included in that service;

[<sup>F445</sup>“an S4C company” means—

- (a) any body corporate which is controlled by the Welsh Authority, or
- (b) any body corporate in which the Welsh Authority or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]

<sup>F446</sup>  
...



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“the Welsh Authority” means the authority renamed Sianel Pedwar Cymru by section 56(1);

[<sup>F447</sup>“wireless telegraphy” and “wireless telegraphy station” each has the same meaning as in the Wireless Telegraphy Act 2006.]

(2) In any provision of—

(a) <sup>F448</sup> . . .

(b) Schedule <sup>F449</sup> . . . , 2, 3, 6, <sup>F449</sup> . . . , <sup>F450</sup> . . . or 19,

“financial year” means a financial year of the body with which that provision is concerned; and in any other provision of this Act “financial year” means the twelve months ending with 31st March.

(3) In this Act—

(a) references to pensions, allowances or gratuities include references to like benefits to be given on death or retirement; and

(b) any reference to the payment of pensions, allowances or gratuities to or in respect of any persons includes a reference to the making of payments towards provision for the payment of pensions, allowances or gratuities to or in respect of those persons.

(4) Any reference in this Act (however expressed) to a licence under this Act being in force is a reference to its being in force so as to authorise the provision under the licence of the licensed service; and any such reference shall accordingly not be construed as prejudicing the operation of any provisions of such a licence which are intended to have effect otherwise than at a time when the licensed service is authorised to be so provided.

<sup>F451</sup>(4A) . . . . .

(5) It is hereby declared that, for the purpose of determining for the purposes of any provision of this Act whether a service is—

(a) <sup>F452</sup> . . . capable of being received, within the United Kingdom or elsewhere, or

(b) for reception at any place or places, or in any area, in the United Kingdom, the fact that the service has been encrypted to any extent shall be disregarded.

<sup>F453</sup>(5A) . . . . .

(6) Any reference in this Act, in relation to a service consisting of programmes transmitted by satellite—

(a) to a person by whom the programmes are transmitted, or

(b) to a place from which the programmes are transmitted,

is a reference to a person by whom, or a place from which, the programmes are transmitted to the satellite by means of which the service is provided.

[<sup>F454</sup>(6A) Subsections (2) and (3) of section 362 of the Communications Act 2003 (persons by whom services provided) are to apply for the purposes of this Act as they apply for the purposes of Part 3 of that Act.]

(7) For the purposes of this Act—

(a) a person shall not be regarded as carrying on business as an advertising agent, or as acting as such an agent, unless he carries on a business involving the selection and purchase of advertising time or space for persons wishing to advertise;

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- (b) a person who carries on such a business shall be regarded as carrying on business as an advertising agent irrespective of whether in law he is the agent of those for whom he acts;
- (c) a person who is the proprietor of a newspaper shall not be regarded as carrying on business as an advertising agent by reason only that he makes arrangements on behalf of advertisers whereby advertisements appearing in the newspaper are also to appear in one or more other newspapers;
- (d) a company or other body corporate shall not be regarded as carrying on business as an advertising agent by reason only that its objects or powers include or authorise that activity.

### Textual Amendments

- F438** Words in s. 202 inserted (18.8.2010) by [The Audiovisual Media Services \(Codification\) Regulations 2010 \(S.I. 2010/1883\)](#), regs. 1, **3(a)**
- F439** Definition “a BBC company” inserted (24.7.1996) in s. 202(1) by 1996 c. 55, s. 136, **Sch. 8**, para. 8 (with s. 43(1)(6))
- F440** Definition “a Channel 4 company” inserted (1.10.1996) in s. 201(1) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(a)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F441** Words in definition “connected” in s. 202(1) substituted (1.11.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(c)** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**
- F442** Words in s. 202(1) substituted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\)](#), regs. 1, **3**
- F443** Words in s. 202(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 68(2)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)
- F444** Words in s. 202(1) inserted (16.4.2010) by [The Audiovisual Media Services \(Product Placement\) Regulations 2010 \(S.I. 2010/831\)](#), regs. 1(1), **10(2)**
- F445** Definition “an S4C company” inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(c)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F446** Words in s. 202(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)
- F447** Words in s. 202(1) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 7 para. 13**
- F448** S. 202(2)(a) repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**
- F449** Words in s. 202(2)(b) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)
- F450** Words in S. 202(2)(b) repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, **art. 4**
- F451** S. 202(4A) omitted (18.8.2010) by virtue of [The Audiovisual Media Services \(Codification\) Regulations 2010 \(S.I. 2010/1883\)](#), regs. 1, **3(b)**
- F452** Words in s. 202(5)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)
- F453** S. 202(5A) omitted (30.12.1998) by virtue of S.I. 1998/3196, reg. 2, **Sch. para. 6(3)**
- F454** S. 202(6A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 68(3)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

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### **203 Consequential and transitional provisions.**

- (1) The enactments mentioned in Schedule 20 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the provisions of this Act).
- (2) Unless the context otherwise requires, in any enactment amended by this Act—
  - “programme”, in relation to a programme service, includes any item included in that service; and
  - “television programme” includes a teletext transmission.
- (3) The enactments mentioned in Schedule 21 to this Act (which include certain spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The transitional provisions and savings contained in Schedule 22 to this Act shall have effect.

### **204 Short title, commencement and extent.**

- (1) This Act may be cited as the Broadcasting Act 1990.
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.
- (3) Subject to subsections (4) and (5), this Act extends to the whole of the United Kingdom.
- (4) In Part VII—
  - (a) section 162 and Schedule 15 extend to England and Wales only;
  - (b) section 163 extends to Scotland only;
  - (c) section 164 extends to England and Wales and Scotland; and
  - (d) section 165 extends to Northern Ireland only.
- (5) The amendments and repeals in Schedules 20 and 21 have the same extent as the enactments to which they refer.
- (6) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend to the Isle of Man or any of the Channel Islands with such modifications, if any, as appear to Her Majesty to be appropriate.

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#### **Subordinate Legislation Made**

**P1** [S. 204\(2\)](#): power of appointment partly exercised by [S.I. 1990/2347](#)

**Status:**

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**Changes to legislation:**

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