



# 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**

#### CHAPTER 1

##### REGULATION BY COMMISSION OF TELEVISION SERVICES GENERALLY

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

#### **1 The Independent Television Commission.**

- (1) There shall be a commission to be called the Independent Television Commission (in this Part referred to as “the Commission”).
- (2) The Commission shall consist of—
  - (a) a chairman and a deputy chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than eight nor more than ten, as he may from time to time determine.
- (3) Schedule 1 to this Act shall have effect with respect to the Commission.

**Status:** Point in time view as at 11/12/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Broadcasting Act 1990, Part I is up to date with all changes known to be in force on or before 02 August 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)

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

- C1** **S. 1(2)(b):** functions to be exercised (1.7.1999) subject to agreement of or consultation with the Scottish Ministers by virtue of [S.I. 1999/1750](#), arts. 1, 4, [Sch. 3](#); [S.I. 1998/3178](#)

*Function of Commission*

**2 Regulation by Commission of provision of television services.**

(1) It shall be the function of the Commission to regulate, in accordance with this Part [<sup>F2</sup>and Part I of the Broadcasting Act 1996], the provision of the following services, namely—

- (a) television programme services which are provided from places in the United Kingdom by persons other than the BBC and the Welsh Authority, <sup>F3</sup> . . .
- (b) additional services which are provided from places in the United Kingdom,
- [<sup>F4</sup>(c) multiplex services (as defined by section 1(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC, and
- (d) digital additional services (as defined by section 24(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC]

and to regulate, in accordance with Part II, the provision of local delivery services (within the meaning of that Part) which are so provided.

(2) It shall be the duty of the Commission—

- (a) to discharge their functions under this Part and Part II [<sup>F5</sup>and under Part I of the Broadcasting Act 1996] as respects the licensing of the services referred to in subsection (1) in the manner which they consider is best calculated—
  - (i) to ensure that a wide range of such services is available throughout the United Kingdom, and
  - (ii) to ensure fair and effective competition in the provision of such services and services connected with them; and
- (b) to discharge their functions under this Part [<sup>F6</sup>and Part I of the Broadcasting Act 1996] as respects the licensing of television programme services [<sup>F6</sup>and multiplex services (as defined by section 1(1) of that Act)] in the manner which they consider is best calculated to ensure the provision of [<sup>F7</sup>television programme services.] which (taken as a whole) are of high quality and offer a wide range of programmes calculated to appeal to a variety of tastes and interests.

(3) Subsection (2)(a)(ii) shall not be construed as affecting the discharge by the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission of any of his or their functions in connection with competition.

(4) In this Part—

“additional service” has the meaning given by section 48(1); and  
 “television programme service” means—

- (a) a television broadcasting service (as defined by subsection (5));
- (b) a non-domestic satellite service (as defined by section 43(2)); <sup>F8</sup> . . .
- (c) a licensable programme service (as defined by section 46(1)). [<sup>F9</sup>or

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- (d) a digital programme service (as defined by section 1(4) of the Broadcasting Act 1996).]
- (5) In this Part “television broadcasting service” means (subject to subsection (6)) a service consisting in the broadcasting of television programmes for general reception in, or in any area in, the United Kingdom, including a domestic satellite service (as defined by section 43(1)) [<sup>F10</sup>but not including a restricted service (as defined by section 42A) or a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996)].
- (6) Subsection (5) does not apply to any teletext service or any other service in the case of which the visual images broadcast in the service consist wholly or mainly of non-representational images, that is to say visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.

#### Textual Amendments

- F2** Words in s. 2(1) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. 1 para. 1(2)(a)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F3** Word in S. 2(1)(a) repealed (1.10.1996) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I**; S.I. 1996/2120, art. 4, **Sch. 1**
- F4** S. 2(1)(c)(d) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(2)(b)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F5** Words in S. 2(2)(a) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(3)(a)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F6** Words in S. 2(2)(b) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(3)(b)(i)(ii)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F7** Words in S. 2(2)(b) substituted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(3)(b)(iii)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F8** Word in s. 2(4) repealed (1.10.1996) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I**; S.I. 1996/2120, art. 4, **Sch. 1**
- F9** S. 2(4)(d) and the preceding word “or” inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 1(4)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F10** Words in s. 2(5) inserted (1.10.1996) by 1996, c. 55 s. 148(1), **Sch. 10 Pt. I para. 1(5)**; S.I. 1996/2120, art. 4, **Sch. 1**

### *General provisions about licences*

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

- (1) Any licence granted by the Commission 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 Chapter II, III, IV or V of this Part.
- (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) The Commission—
- (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

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- (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>F11</sup>(3A) Where the Commission 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) The Commission 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 the Commission 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 the Commission.
- (7) Without prejudice to the generality of subsection (6), the Commission 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.
- (8) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the <sup>M1</sup>Wireless Telegraphy Act 1949 or section 7 of the <sup>M2</sup>Telecommunications Act 1984 in connection with the provision of that service.

#### Textual Amendments

**F11** S. 3(3A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1)(f), Sch. 8 para. 1

#### Marginal Citations

**M1** 1949 c. 54.

**M2** 1984 c. 12.

## 4 General licence conditions.

- (1) A licence may include—
- (a) such conditions as appear to the Commission 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;
  - (b) conditions requiring the payment by the licence holder to the Commission (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;

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- (c) conditions requiring the licence holder to provide the Commission, 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;
  - (d) conditions providing for such incidental and supplemental matters as appear to the Commission to be appropriate.
- (2) A licence may in particular include conditions requiring the licence holder—
- (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified; or
  - (b) (except to the extent that the Commission consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified.
- (3) The fees required to be paid to the Commission by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by the Commission; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to this Act.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Commission 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 the Commission 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 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).

## **5 Restrictions on the holding of licences.**

- (1) The Commission 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
  - (b) that any requirements imposed by or under Parts III to V of that Schedule are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Commission 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—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),

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- (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;
  - (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>F12</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Commission shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]
- (3) Where the Commission—
    - (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 the Commission 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 the Commission 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,
 the Commission 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>F13</sup>(6) The Commission shall not serve any such notice on the licence holder unless—
    - (a) the Commission have notified him of the matters complained of 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 Parts III and IV of Schedule 2 within a period specified in the notification, and
      - (ii) the period specified in the notification has elapsed.

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

- (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2;
- (b) a change in the national market share (within the meaning of Part IV of that Schedule) 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 that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).

(6B) Where a licence has been granted in a case where the Commission could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Commission would have made such a determination in the new circumstances of the case.]

[<sup>F14</sup>(6C) The Commission 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>F14</sup>(6D) Where the Commission 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>F15</sup>or
- (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,]

being [<sup>F16</sup>(in any case)] a change which is such that, if it fell to the Commission 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

- F12** S. 5(2A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(2)**
- F13** 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**
- F14** S. 5(6C)(6D) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(3)**
- F15** 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**
- F16** 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**

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

- C2** S. 5(1) modified (1.11.1996) by 1996 c. 55, s. 143(1)(2); S.I. 1996/2120, art. 5, **Sch. 2**
- C3** S. 5(1)(a) amended (1.11.1996) by 1996 c. 55, s. 145(7); S.I. 1996/2120, art. 5, **Sch. 2**

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### *General provisions about licensed services*

## **6 General requirements as to licensed services.**

- (1) The Commission shall do all that they can to secure that every licensed service complies with the following requirements, namely—
  - (a) that nothing is included in its programmes 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;
  - (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality;
  - (c) that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
  - (d) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those watching the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and
  - (e) that its programmes do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.
- (2) In applying subsection (1)(c) a series of programmes may be considered as a whole.
- (3) The Commission shall—
  - (a) draw up, and from time to time review, a code giving guidance as to the rules to be observed in connection with the application of subsection (1)(c) in relation to licensed services; and
  - (b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services;

and the Commission may make different provision in the code for different cases or circumstances.
- (4) Without prejudice to the generality of subsection (1), the Commission shall do all that they can to secure that there are excluded from the programmes included in a licensed service all expressions of the views and opinions of the person providing the service on matters (other than the provision of programme services) which are of political or industrial controversy or relate to current public policy.
- (5) The rules specified in the code referred to in subsection (3) shall, in particular, take account of the following matters—
  - (a) that due impartiality should be preserved on the part of the person providing a licensed service as respects major matters falling within subsection (1)(c) as well as matters falling within that provision taken as a whole; and
  - (b) the need to determine what constitutes a series of programmes for the purposes of subsection (2).



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- (6) The rules so specified shall, in addition, indicate to such extent as the Commission consider appropriate—
- (a) what due impartiality does and does not require, either generally or in relation to particular circumstances;
  - (b) the ways in which due impartiality may be achieved in connection with programmes of particular descriptions;
  - (c) the period within which a programme should be included in a licensed service if its inclusion is intended to secure that due impartiality is achieved for the purposes of subsection (1)(c) in connection with that programme and any programme previously included in that service taken together; and
  - (d) in relation to any inclusion in a licensed service of a series of programmes which is of a description specified in the rules—
    - (i) that the dates and times of the other programmes comprised in the series should be announced at the time when the first programme so comprised is included in that service, or
    - (ii) if that is not practicable, that advance notice should be given by other means of subsequent programmes so comprised which include material intended to secure, or assist in securing, that due impartiality is achieved in connection with the series as a whole;and those rules shall, in particular, indicate that due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles.
- (7) The Commission shall publish the code drawn up under subsection (3), and every revision of it, in such manner as they consider appropriate.
- (8) Nothing in this section or in sections 7 to 12 has effect in relation to any licensed service which is an additional service other than [<sup>F17</sup>a teletext service].

#### Textual Amendments

**F17** Words in s. 6(8) substituted (1.11.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 13**; S.I. 1996/2120, art. 5, Sch. 2

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

**C4** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, **S. 25(5)(6)**; S.I. 1996/2120, **art. 4 Sch. 1**

Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, **s. 30(5)**; S.I. 1996/2120, art. 4, **Sch.**

**C5** S. 6 applied (with modifications) (1.10.1996) by 1996 c. 55, **s. 18(5)(6)**; S.I. 1996/2120, art. 4, **Sch. 1**

## 7 General code for programmes.

- (1) The Commission shall draw up, and from time to time review, a code giving guidance—
- (a) as to the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programmes included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programmes;
  - (b) as to the rules to be observed with respect to the inclusion in such programmes of appeals for donations; and

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- (c) as to such other matters concerning standards and practice for such programmes as the Commission may consider suitable for inclusion in the code;
- and the Commission shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.
- (2) In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Commission shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be watching the programmes.
- (3) The Commission shall, in drawing up or revising the code under this section, take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (4) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

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

- C6** S. 7 applied (27.7.2000) by S.I. 2000/1864, **Sch. para. 2**
- C7** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, **Sch. 1**
- C8** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, **Sch. 1**
- Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, **Sch. 1**

**8 General provisions as to advertisements.**

- (1) The Commission shall do all that they can to secure that the rules specified in subsection (2) are complied with in relation to licensed services.
- (2) Those rules are as follows—
- (a) a licensed service must not include—
- (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
- (ii) any advertisement which is directed towards any political end, or
- (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
- (b) in the acceptance of advertisements for inclusion in a licensed service there must be no unreasonable discrimination either against or in favour of any particular advertiser; and
- (c) a licensed service must not, without the previous approval of the Commission, include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the licence holder is prohibited from advertising by virtue of any provision of section 9.
- (3) Nothing in subsection (2) shall be construed as prohibiting the inclusion in a licensed service of any party political broadcast which complies with the rules (so far as applicable) made by the Commission for the purposes of section 36.

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- (4) After consultation with the Commission the Secretary of State may make regulations amending, repealing, or adding to the rules specified in subsection (2); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (5) The Commission shall not act as an advertising agent.

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

- C9** S. 8 modified (1.10.1996) by 1996 c. 55, s. 31; S.I. 1996/2120, art. 4, **Sch. 1**
- C10** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, **Sch. 1**
- C11** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, **Sch. 1**
- Ss. 6-12 (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, **Sch. 1**

## 9 Control of advertisements.

- (1) It shall be the duty of the Commission—
  - (a) after the appropriate consultation, to draw up, and from time to time review, a code—
    - (i) governing standards and practice in advertising and in the sponsoring of programmes, and
    - (ii) prescribing the advertisements and methods of advertising or sponsorship to be prohibited, or to be prohibited in particular circumstances; and
  - (b) to do all that they can to secure that the provisions of the code are observed in the provision of licensed services;and the Commission may make different provision in the code for different kinds of licensed services.
- (2) In subsection (1) “the appropriate consultation” means consultation with—
  - (a) the Radio Authority;
  - (b) every person who is the holder of a licence under this Part;
  - (c) such bodies or persons appearing to the Commission to represent each of the following, namely—
    - (i) viewers,
    - (ii) advertisers, and
    - (iii) professional organisations qualified to give advice in relation to the advertising of particular products,as the Commission think fit; and
  - (d) such other bodies or persons who are concerned with standards of conduct in advertising as the Commission think fit.
- (3) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.
- (4) The Commission shall—
  - (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be included in licensed services

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- and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of such services; and
- (b) carry out any directions which he may give to them in respect of such matters.
- (5) The Commission may, in the discharge of a general responsibility with respect to advertisements and methods of advertising and sponsorship, impose requirements as to advertisements or methods of advertising or sponsorship which go beyond the requirements imposed by the code.
- (6) The methods of control exercisable by the Commission for the purpose of securing that the provisions of the code are complied with, and for the purpose of securing compliance with requirements imposed under subsection (5) which go beyond the requirements of the code, shall include a power to give directions to the holder of a licence—
- (a) with respect to the classes and descriptions of advertisements and methods of advertising or sponsorship to be excluded, or to be excluded in particular circumstances, or
- (b) with respect to the exclusion of a particular advertisement, or its exclusion in particular circumstances.
- (7) The Commission may give directions to persons holding any class of licences with respect to the times when advertisements are to be allowed.
- (8) Directions under this section may be, to any degree, either general or specific and qualified or unqualified; and directions under subsection (7) may, in particular, relate to—
- (a) the maximum amount of time to be given to advertisements in any hour or other period,
- (b) the minimum interval which must elapse between any two periods given over to advertisements and the number of such periods to be allowed in any programme or in any hour or day,
- (c) the exclusion of advertisements from a specified part of a licensed service, and may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.
- (9) The Commission shall—
- (a) in drawing up or revising the code, or
- (b) in giving any directions under subsection (7),
- take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

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

**C12** S. 9 modified (1.10.1996) by 1996 c. 55, s. 31; S.I. 1996/2120, art. 4, Sch. 1

**C13** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, Sch. 1

**C14** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, Sch. 1

Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, Sch. 1

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## 10 Government control over licensed services.

- (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 Commission to direct the holders of any licences specified in the notice to publish in their licensed services, at such times as may be specified in the notice, such announcement as is so specified, with or without visual images of any picture, scene or object mentioned in the announcement; and it shall be the duty of the Commission to comply with the notice.
- (2) Where the holder of a licence publishes any announcement in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (3) The Secretary of State may at any time by notice require the Commission to direct the holders of any licences specified in the notice to refrain from including in the programmes included in their licensed services any matter or classes of matter specified in the notice; and it shall be the duty of the Commission to comply with the notice.
- (4) Where the Commission—
  - (a) have given the holder of any licence a direction in accordance with a notice under subsection (3), or
  - (b) in consequence of the revocation by the Secretary of State of such a notice, have revoked such a direction,or where such a notice has expired, the holder of the licence in question may publish in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (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.
- (6) In relation to any licensed service provided from a place in Northern Ireland, the reference in subsection (1) to a Minister of the Crown includes a reference to the head of any Northern Ireland department.

### Modifications etc. (not altering text)

- C15** S. 10 extended (1.10.1996) by 1996 c. 55, s. 12(7); S.I. 1996/2120, art. 4, Sch. 1  
**C16** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, Sch. 1  
**C17** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, Sch. 1  
Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, Sch. 1

## 11 Monitoring by Commission of programmes included in licensed services.

- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Commission may make and use recordings of those programmes or any part of them.
- (2) A licence shall include conditions requiring the licence holder—
  - (a) to retain, for a period not exceeding 90 days, a recording of every programme included in the licensed service;

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- (b) at the request of the Commission, to produce to them any such recording for examination or reproduction;
  - (c) at the request of the Commission, to produce to them any script or transcript of a programme included in the licensed service which he is able to produce to them.
- (3) Nothing in this Part shall be construed as requiring the Commission, in the discharge of their duties under this Part as respects licensed services and the programmes included in them, to view such programmes in advance of their being included in such services.

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

**C18** Ss. 7-11 applied (1.10.1996) by 1996 c. 55, s. 18(5); S.I. 1996/2120, art. 4, Sch. 1

**C19** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, Sch. 1

Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, Sch. 1

## 12 Audience research.

- (1) The Commission shall make arrangements—
- (a) for ascertaining—
    - (i) the state of public opinion concerning programmes included in licensed services, and
    - (ii) any effects of such programmes on the attitudes or behaviour of persons who watch them; and
  - (b) for the purpose of assisting them to perform their functions under Chapter II in connection with the programmes to be included in the various services licensed thereunder, for ascertaining the types of programme that members of the public would like to be included in licensed services.
- (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 Commission; and
  - (b) include provision for full consideration by the Commission of the results of any such research.

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

**C20** Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 25(5)(6); S.I. 1996/2120, art. 4, Sch. 1

Ss. 6-12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 30(5); S.I. 1996/2120, art. 4, Sch. 1

S. 12 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 18(5)(6); S.I. 1996/2120, art. 4, Sch. 1

### *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 service falling within section 2(1)(a) [F18,(b), (c) or (d)] without being authorised to do so by or under a

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- licence under this Part [F19 or Part I of the Broadcasting Act 1996] shall be guilty of an offence.
- (2) The Secretary of State may, after consultation with the Commission, 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), 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

- F18** Words in s. 13(1) substituted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 2(1)(a)**; S.I. 1996/2120, art. 4, **Sch. 1**
- F19** 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**

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

- C21** 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) The Commission 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 the Commission may determine in the case of that service.

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- (3) If it appears to the Commission 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 the Commission 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 the Commission may determine.
- (5) If the Commission 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).
- (7) Any reference in this section to an area in the United Kingdom does not include an area which comprises or includes the whole of England or the whole of Scotland.
- (8) In this section and section 15 “programme” does not include an advertisement.

## **15 Applications for Channel 3 licences.**

- (1) Where the Commission 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



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- (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.
- (2) The Commission 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 the Commission that the service would comply with the requirements specified in section 16(2) or (3) (as the case may be).
- (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 specified in section 16(2) or (3) (as the case may be);(c) the applicant's proposals for promoting the understanding and enjoyment by—
    - (i) persons who are deaf or hard of hearing, and
    - (ii) persons who are blind or partially-sighted,of the programmes to be included in his proposed service;
  - (d) 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, together with his proposals for encouraging the training or retraining of persons employed or to be employed by persons providing programmes for inclusion in that service;
  - (e) if the application is for a licence to provide a regional Channel 3 service, the applicant's proposals as to the use, in connection with his proposed service—
    - (i) of offices and studios situated within the area for which that service would be provided, and
    - (ii) of the services of persons employed (whether by him or by any other person) within that area;
  - (f) the applicant's cash bid in respect of the licence;
  - (g) such information as the Commission 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 the Commission may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under any of paragraphs (b) to (e), (g) and (h) of subsection (3).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission 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 the Commission 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 the Commission 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).

## **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, the Commission 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 specified in subsection (2) or (3) below (as the case may be), and
  - (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 the Commission that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Where the service to be provided under the licence is a regional Channel 3 service, the requirements referred to in subsection (1)(a) are—
  - (a) that a sufficient amount of time is given in the programmes included in the service to news programmes and current affairs programmes which (in each case) are of high quality and deal with both national and international matters, and that such news programmes are broadcast at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
  - (b) that a sufficient amount of time is given in the programmes included in the service to programmes (other than news and current affairs programmes) which are of high quality;
  - (c) that a sufficient amount of time is given in the programmes so included—
    - (i) to a suitable range of regional programmes, that is to say, programmes (including news programmes) which are of particular interest to persons living within the area for which the service is provided, and
    - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), to a suitable range of programmes for each of the different parts of that area or (as the case may be) for each of the different communities living within it, being in each case a range of programmes (including news programmes) which are of

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- particular interest to persons living within the relevant part of that area or (as the case may be) the relevant community,
- and that any news programmes so included in accordance with subparagraph (i) or (ii) are of high quality;
- (d) that a suitable proportion of the regional programmes included in the service in accordance with paragraph (c) are made within the area for which it is to be provided;
- (e) that a sufficient amount of time is given in the programmes included in the service to religious programmes and programmes intended for children;
- (f) that (taken as a whole) the programmes so included are calculated to appeal to a wide variety of tastes and interests;
- (g) that a proper proportion of the matter included in those programmes is of European origin; and
- (h) that in each year not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity of independent productions.
- (3) Where the service to be provided under the licence is a national Channel 3 service, the requirements referred to in subsection (1)(a) are such (if any) of the requirements specified in subsection (2) as the Commission may determine to be appropriate having regard to the nature of that service.
- (4) In deciding whether an applicant's proposed service would comply with the requirements specified in subsection (2) or (3) (as the case may be), the Commission shall take into account any representations made to them in pursuance of section 15(6) (b) with respect to that service; and in applying subsection (2)(g) the Commission shall have regard to such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (5) In subsection (2)(h)—
- (a) “qualifying programmes” and “independent productions” mean, in each case, programmes of such description as the Secretary of State may by order specify for the purpose; and
- (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (6) The Secretary of State may by order amend subsection (2)(h) by substituting a different percentage for the percentage for the time being specified there.
- (7) Before making an order under subsection (5) or (6) the Secretary of State shall consult the Commission; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section “programme” does not include an advertisement.

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

- (1) Subject to the following provisions of this section, the Commission 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.
- (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

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bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Commission 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) The Commission 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), the Commission 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 the Commission—
  - (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 the Commission, 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 the Commission, 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.
- (8) In a case where any requirement such as is mentioned in section 5(1)(b) operates to preclude the Commission 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

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- 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 the Commission by applicants at the time of making their applications.
- (9) Any such rules shall be published by the Commission 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 the Commission 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 the Commission 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 the Commission that his proposed service would comply with the requirements specified in section 16(2) or (3) (as the case may be);
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Commission's reasons for the licence having been so awarded; and
  - (d) such other information as the Commission 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 the Commission 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 made an application for it, this section shall not so have effect if the Commission 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.

**[<sup>F20</sup>17A Award of Channel 3 licence subject to conditions.**

- (1) The Commission 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—

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- (a) any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and
  - (b) 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 the Commission 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 the Commission 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

**F20** S. 17A inserted (1.10.1996) by 1996 c. 55, s. 86(1); S.I. 1996/2120, art. 4, Sch. 1

### 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 the Commission that he does not intend to provide the service in question, or
  - (b) the Commission 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) the Commission 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 the Commission 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 the Commission 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, a financial penalty of the prescribed amount.
- (4) In subsection (3) “the prescribed amount” means—
- (a) where—
    - (i) the licence is revoked under this section, or
    - (ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended,

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- 7 per cent. of the amount which the Commission estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 19(2) to (6)); and
- (b) in any other case, 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (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 the Commission as a debt due to them from any person who controls that body.

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

**C22** 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 the Commission (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 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—
- (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)(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—
- (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.

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- (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 the Commission 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 the Commission 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 <sup>F21</sup>Office for National Statistics].

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**Textual Amendments**

**F21** Words in S. 19(10) substituted (1.4.1996) by [S.I. 1996/273, art. 5\(1\)](#), [Sch. 2 para. 25](#)



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## **20 Duration and renewal of Channel 3 licences.**

- (1) A Channel 3 licence shall (subject to the provisions of this Part) continue in force for a period of ten years, and 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 Channel 3 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 the relevant date.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a Channel 3 licence has been duly made to the Commission, they may only (subject to subsection (5)) refuse the application if—
  - (a) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied—
    - (i) with the conditions included in the licence in pursuance of subsection (1) of section 33 (whether as originally imposed or as varied under subsection (3) of that section), and
    - (ii) with the requirements specified in section 16(2) or (3) (as the case may be); or
  - (b) they propose to grant a fresh Channel 3 licence for the provision of a service which would differ from that provided by the applicant under his licence as respects either—
    - (i) the area for which it would be provided, or
    - (ii) the times of the day or days of the week between or on which it would be provided,or both.
- (5) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of a Channel 3 licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), 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 such application the Commission—
  - (a) shall determine an amount which is to be payable to the Commission by the applicant 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 15(1)(d)
    - (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 19(1)(c) during the period for which the licence is to be renewed.
- (7) The amount determined by the Commission under subsection (6)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 19(1)(a) if they were granting a fresh licence to provide the Channel 3 service in question.
- (8) Where the Commission 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

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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 (6)(a), and
- (b) any percentage specified by them under subsection (6)(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.

- (9) Where a Channel 3 licence has been renewed under this section—
  - (a) any conditions included in it in pursuance of section 19 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Commission under subsection (6)(a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (6)(b) above;
  - (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 Channel 3 licence is originally in force; and
  - (c) the reference in section 42(4) to the end of the period for which a Channel 3 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.
- (10) In this section “the relevant date”, in relation to a Channel 3 licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 15(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 Channel 3 service formerly provided under that licence.

## **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 the Commission,

then (subject to subsection (4)) the Commission 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 appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion 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;

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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.

- (3) The Commission 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 the Commission 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) The Commission 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) the Commission 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.

#### **[<sup>F22</sup>21A Variation of regional Channel 3 licence following change of control.**

- (1) Any regional Channel 3 licence granted to a body corporate after the commencement of this section shall include—
- (a) a condition requiring the body to give the Commission advance notice of any proposals known to the body that may give rise to a relevant change of control, and
  - (b) a condition requiring the licence holder to provide the Commission, in such manner and at such times as they may reasonably require, with such information as they may require for the purposes of exercising their functions under this section.
- (2) Subsections (3) and (4) have effect where—
- (a) in pursuance of a condition in a regional Channel 3 licence the Commission receive notice of any proposals that may give rise to a relevant change of control, or
  - (b) a relevant change of control takes place in relation to a body corporate which holds a regional Channel 3 licence (whether or not that change has been previously notified to the Commission).
- (3) If it appears to the Commission that the relevant change of control is or would be prejudicial to one or more of the following matters, namely—
- (a) the quality or range of regional programmes included in the service,

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- (b) the quality or range of other programmes included in the service which contribute to the regional character of the service, or
- (c) the quality or range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1),

then, with a view to ensuring that the relevant change of control is not prejudicial to any of those matters, the Commission shall vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of those matters as they consider appropriate.

(4) If it appears to the Commission that, having regard to the effect, or likely effect, of the relevant change of control on—

- (a) the time given, in the programmes included in the service—
  - (i) to regional programmes, or
  - (ii) to programmes of the kind mentioned in subsection (3)(b),
- (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided,
- (c) the extent of the use in connection with the service—
  - (i) of offices or studios situated within the area for which the service is provided, or
  - (ii) of the services of persons employed (whether by the licence holder or any other person) within that area, or
- (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area,

the relevant change of control is or would be prejudicial to the regional character of the service, the Commission may vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of the matters specified in paragraphs (a), (b), (c) and (d) as they consider appropriate.

(5) Subject to subsection (6), any new or varied condition imposed under subsection (3) or (4) in relation to any matter specified in that subsection may be more onerous than any existing conditions relating to that matter; and in this subsection “existing condition” means a condition of the licence as it has effect, or had effect, before the relevant change of control.

(6) The Commission may not under subsection (3) or (4) include any new or varied condition in a licence unless the new condition or the condition as varied is one which (with any necessary modifications) would have been satisfied by the licence holder—

- (a) during the three months immediately before the relevant date, or
- (b) if the Commission consider that the performance of the licence holder during that period is not typical of its performance during the twelve months before the relevant date, during such other period of three months during those twelve months as they may notify in writing to the licence holder;

and for the purposes of this subsection “the relevant date” is the date of the relevant change of control or, if earlier, the date on which the Commission exercise their powers under subsection (3) or (4).

(7) The Commission shall not serve a notice on any body under subsection (3) or (4) unless they have given it a reasonable opportunity of making representations to them about the variation.

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- (8) Where, in a case falling within subsection (2)(a), a notice under subsection (3) or (4) varying a licence is served before the change to which it relates takes place, the variation shall not take effect until the change takes place.
- (9) In this section—
- “regional programme”, in relation to any regional Channel 3 service, means any programme (including a news programme) which is of particular interest—
- (a) to persons living within the area for which the service is provided,
- (b) to persons living within any part of that area, or
- (c) to particular communities living within that area;
- “relevant change of control” means a change in the persons having control over—
- (a) the body holding the licence, or
- (b) any body which is connected with that body and appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service.]

#### Textual Amendments

**F22** S. 21A inserted (24.7.1996) by 1996 c. 55, s. 78(1), 149(1)(b)

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

- (1) Where it appears to the Commission—
- (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,
- the Commission 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, the Commission 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.

### 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—

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- (a) a chairman and a deputy chairman appointed by [F23OFCOM] ; and
  - (b) such number of other members, not being less than eleven nor more than thirteen, as [F23OFCOM] may from time to time determine.
- (3) The other members referred to in subsection (2)(b) shall consist of—
- (a) persons appointed by [F23OFCOM] ; and
  - (b) ex-officio members of the Corporation;
- and the total number of members appointed by [F23OFCOM] under subsection (2)(a) and paragraph (a) above shall exceed the number of ex-officio members.
- (4) Any appointment made by [F23OFCOM] 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

**F23** 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)

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

**C23** 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)

**C24** 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) The function of the Corporation shall be to 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 the Commission, and shall be so provided for so much of England, Scotland and Northern Ireland as may from time to time be reasonably practicable.
- (4) The licence to be granted to the Corporation by the Commission in pursuance of subsection (3) shall continue in force for a period of ten years beginning with 1st January 1993, and may be renewed by the Commission on one or more occasions for a period of ten years beginning with the date of renewal.

[F24(5) The Corporation shall also have power—

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- (a) (subject to and in accordance with Part I of the Broadcasting Act 1996) to arrange for the broadcasting of Channel 4 in digital form in any part of the United Kingdom as a qualifying service (within the meaning of that Part), and
  - (b) to establish qualifying companies, to purchase or otherwise acquire shares, stocks or other securities of qualifying companies and to assist any qualifying company.
- (6) In subsection (5)(b) “qualifying company” means any company (whether incorporated under the law of the United Kingdom or of any other country) which is or will be wholly or mainly engaged in one or more of the following activities—
- (a) the provision of one or more services which are licensed by the Commission or by the Radio Authority or which, if provided in the United Kingdom, would be required to be so licensed,
  - (b) activities incidental to such provision, and
  - (c) the holding of shares in any other company which is wholly or mainly engaged in such provision or in activities incidental to such provision.]

**Textual Amendments**

**F24** S. 24(5)(6) inserted (1.10.1996) by 1996 c. 55, s. 84(1); S.I. 1996/2120, art. 4, Sch. 1

PROSPECTIVE

**F25 25 Conditions to be included in Channel 4 licence.**

**Textual Amendments**

**F25** 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)

**26 Revenue deficits of Corporation to be funded by Channel 3 licensees.**

- (1) The Commission shall, before the beginning of the year 1993 and each subsequent year—
- (a) estimate the amount of the Corporation’s qualifying revenue for that year;
  - (b) estimate the amount of the total television revenues for that year; and
  - (c) estimate the Corporation’s prescribed minimum income for that year;
- and the Commission may, on one or more occasions, revise any estimate made by them under this subsection.
- (2) For the purposes of this section—
- (a) the Corporation’s prescribed minimum income for any year shall be 14 per cent. of the total television revenues for that year; and
  - (b) “total television revenues” means, in relation to any year, the aggregate of the qualifying revenues for that year of the following, namely—
    - (i) all holders of Channel 3 or Channel 5 licences;

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- (ii) the Welsh Authority; and
  - (iii) the Corporation itself.
- (3) If, in the case of any year, the aggregate of the following amounts, namely—
- (a) the amount of the Corporation’s qualifying revenue for that year as estimated by the Commission under subsection (1), and
  - (b) any amount which, at the beginning of that year, is for the time being standing to the credit of any such reserve fund as is mentioned in section 27(3),
- is less than the amount of the Corporation’s prescribed minimum income for that year as estimated by the Commission under subsection (1), then (subject to subsection (4)) the amount of the difference shall be raised by the Commission by means of a levy imposed on all persons who are for the time being holders of Channel 3 licences.
- (4) The aggregate amount payable by virtue of any levy under subsection (3) shall not exceed 2 per cent. of the amount estimated by the Commission for the year in question under subsection (1)(b); and the amount to be paid by each of the persons subject to the levy shall be such proportion of that aggregate amount as is determined by the Commission in relation to him (and different proportions may be so determined in relation to different persons).
- (5) Every Channel 3 licence shall include conditions—
- (a) requiring the holder of the licence to pay to the Commission, by monthly instalments, any amount which he is liable to pay by virtue of subsections (3) and (4);
  - (b) authorising the Commission to adjust the instalments payable by the holder of the licence to take account of any revised estimate made by them under subsection (1); and
  - (c) providing for the adjustment of any overpayment or underpayment.
- (6) Any amount received by the Commission by virtue of subsection (5)(a) shall be transmitted by them to the Corporation.
- (7) Where, in respect of any year—
- (a) the Commission have imposed a levy under subsection (3), and
  - (b) the aggregate amount transmitted by them to the Corporation under subsection (6) exceeds the relevant amount,
- the Commission shall notify the Corporation of that fact; and the Corporation shall, as soon as reasonably practicable after receiving such a notification, repay to the Commission the amount of that excess.
- (8) In subsection (7) “the relevant amount” means the amount by which the aggregate of the following amounts, namely—
- (a) the Corporation’s qualifying revenue for the year in question, and
  - (b) any such amount as is mentioned in subsection (3)(b),
- is less than the Corporation’s prescribed minimum income for that year.
- (9) Section 19(2) to (6) shall have effect, with any necessary modifications, for the purpose of enabling the Commission to estimate or determine a person’s qualifying revenue for any year for the purposes of this section.
- (10) The Secretary of State may by order amend subsection (2) or (4) above by substituting a different percentage for the percentage for the time being specified there; but no such order may be made before the end of the year 1997.



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- (11) An order shall not be made under subsection (10) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

## 27 Application of excess revenues of Corporation.

- (1) Where the qualifying revenue of the Corporation for any year exceeds the Corporation's prescribed minimum income for that year, the Corporation shall—

- (a) pay [<sup>F26</sup>50 per cent] of the excess to the Commission; and  
(b) apply [<sup>F27</sup>the remainder of the excess] in accordance with subsection (3).

- (2) Where the Commission receive any amount under subsection (1)(a) in respect of any year, they shall distribute that amount (“the relevant amount”) between the holders of Channel 3 licences in such a way that each of them receives such proportion of the relevant amount as corresponds to the proportion of the aggregate amount referred to in subsection (4) of section 26 which he would, in the opinion of the Commission, have been required to pay if a levy had been imposed for that year under subsection (3) of that section.

- (3) Where subsection (1)(b) has effect in relation to any amount—

- (a) [<sup>F28</sup>nil per cent] of that amount shall be carried by the Corporation to the credit of a reserve fund established by them under this subsection, and  
(b) [<sup>F29</sup>the remainder of that amount] may be applied by the Corporation towards meeting current expenditure incurred by them in connection with the provision of Channel 4, but to the extent that it is not so applied shall be carried to the credit of that fund;

and (subject to the following provisions of this section) the management and application of that fund shall be as the Corporation may determine.

- (4) Subject to subsection (5), no part of that fund shall be applied otherwise than for the purposes of Channel 4; and no direction may be given by the Secretary of State under that subsection with respect to the application of any amount for the time being standing to the credit of that fund which has been taken into account by the Commission for the purposes of section 26(3)(b) or (8)(b).

- (5) The Secretary of State may, with the approval of the Treasury, give to the Corporation such directions as he thinks fit with respect to the management and application of that fund (including directions requiring the whole or part of it to be paid into the Consolidated Fund); and the Corporation shall comply with any such directions.

- (6) In subsection (1) above the reference to the Corporation's prescribed minimum income for any year shall be construed in accordance with section 26(2); and subsections (2) to (6) of section 19 shall have effect for determining the Corporation's qualifying revenue for any year for the purposes of subsection (1) above as they have effect for determining a person's qualifying revenue for any accounting period of his for the purposes of subsection (1)(c) of that section.

- [<sup>F30</sup>(7) The Secretary of State may by order—

- (a) amend subsection (1)(a) by substituting for the percentage for the time being specified there a percentage specified in the order, which may be nil but must not be more than 50 per cent., and  
(b) amend subsection (3)(a) by substituting for the percentage for the time being specified there a percentage specified in the order, which may be nil.

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- (8) An order shall not be made under subsection (7) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.]

#### **Textual Amendments**

- F26** Words in s. 27(1)(a) substituted (24.7.1996) by 1996 c. 55, ss. 83(2)(a), 149(2) (with s. 43(1)(6))  
**F27** Words in s. 27(1)(b) substituted (24.7.1996) by 1996 c. 55, ss. 83(2)(b), 149(2) (with s. 43(1)(6))  
**F28** Words in s. 27(3)(a) substituted (11.12.1996) by S.I. 1996/3093, art. 2  
**F29** Words in s. 27(3)(b) substituted (24.7.1996) by 1996 c. 55, ss. 83(3)(b), 149(2) (with s. 43(1)(6))  
**F30** S. 27(7)(8) inserted (24.7.1996) by 1996 c. 55, ss. 83(4), 149(2) (with s. 43(1)(6))

### *Channel 5*

#### **28 Channel 5.**

- (1) The Commission 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 the Commission 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 the Commission 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 the Commission 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.

#### **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—
  - (a) section 15(1)(b)(i) shall be read as referring to any such minimum area of the United Kingdom as is determined by the Commission in accordance with section 28(2); and
  - (b) section 16(2) shall (except where subsection (3) below applies) have effect with the omission of paragraphs (c) and (d).
- (3) Where the Commission make a determination under section 28(3), section 16(2) shall, in its application in relation to each Channel 5 licence, have effect to such extent as they may determine to be appropriate having regard to the nature of the service to be provided under that licence.

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### **30 Initial Channel 5 licensee required to retune equipment susceptible to interference.**

- (1) A Channel 5 licence which is in force at the commencement of the provision of Channel 5 shall include conditions—
  - (a) requiring the holder of the licence to make arrangements for any relevant equipment to be retuned or otherwise modified—
    - (i) at the request of the person by whom the equipment is kept (being a request made before such date as is specified in the conditions), and
    - (ii) without charge to that person,so far as is necessary to prevent the equipment from suffering interference caused by the transmission of Channel 5;
  - (b) requiring all work falling to be carried out under the arrangements—
    - (i) to be carried out in a proper manner, and
    - (ii) to be completed within such period as is specified in the conditions; and
  - (c) enabling the Commission to determine whether work carried out under the arrangements is carried out in a proper manner.
- (2) Any such Channel 5 licence shall also include conditions requiring the holder of the licence to publicise, in such manner as may be approved by the Commission, information with respect to—
  - (a) the likelihood of different kinds of equipment suffering interference caused by the transmission of Channel 5;
  - (b) the arrangements which the holder of the licence is required to make by virtue of conditions imposed in pursuance of subsection (1); and
  - (c) the kinds of equipment in relation to which those arrangements are to be so made.
- (3) The holder of a Channel 5 licence shall not be required, by virtue of conditions imposed in pursuance of subsection (1), to make any such arrangements as are mentioned in that subsection in relation to any relevant equipment—
  - (a) unless the equipment—
    - (i) is, on the date of the making of such a request as is referred to in paragraph (a)(i) of that subsection, kept by the person in question wholly or mainly for domestic purposes, and
    - (ii) was so kept by that person on the commencement date (if that date occurred before the date mentioned in sub-paragraph (i) above); or
  - (b) if the equipment would not be liable to suffer interference caused by the transmission of Channel 5 but for the installation at the place where the equipment is kept of any apparatus for enabling that service to be received there;and, where any relevant equipment has been retuned or otherwise modified in accordance with any such conditions, the holder of such a licence shall not be required by virtue of any such conditions to make arrangements on any subsequent occasion for the retuning or other modification of that equipment.
- (4) Any dispute as to when the commencement date occurred in the case of any relevant equipment shall be determined by the Commission.
- (5) Where—

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- (a) in accordance with section 28(3), more than one Channel 5 licence is in force at the same time, and
- (b) each of the licences includes such conditions as are mentioned in subsections (1) and (2),

the holders of the licences shall each comply with those conditions to such extent as the Commission may determine in relation to him.

- (6) Where the holder of a Channel 5 licence is required, by virtue of conditions imposed in pursuance of subsection (1), to make any such arrangements as are mentioned in that subsection in relation to any relevant equipment, those conditions shall be taken as requiring him in addition to make arrangements for any television set connected to that equipment to be returned—

- (a) at the request of the person by whom the equipment is kept, and
- (b) without charge to that person,

so far as is necessary to enable it to be used in conjunction with the equipment (as returned or otherwise modified); and subsections (1)(b) and (c) and (2)(b) shall have effect in relation to those arrangements as they have effect in relation to any such arrangements as are mentioned in subsection (1)(a).

- (7) In this section—

“the commencement date”, in relation to any relevant equipment, means the date when Channel 5 began to be provided for reception in an area which includes the place where the equipment is kept on the date of the making of such a request as is referred to in subsection (1)(a)(i); and

“relevant equipment” means any equipment which is capable of transmitting self-generated electromagnetic signals for reception by a television set connected to it and which is liable, if used without being returned or otherwise modified, to suffer interference caused by the transmission of Channel 5.

#### *Provision of news programmes*

### **31 Provision of news on Channels 3 and 5.**

- (1) A Channel 3 or Channel 5 licence shall include conditions requiring the licence holder—

- (a) to broadcast in the licensed service news programmes of high quality dealing with national and international matters; and
- (b) to broadcast such programmes in that service at intervals throughout the period for which the service is provided, and in particular (except in the case of a national Channel 3 licence) at peak viewing times.

- (2) [<sup>F31</sup>For the purpose of securing the nationwide broadcast, by holders of regional channel 3 licenses (taken together), of news programmes which are able to compete effectively with other news programmes broadcast nationwide in the United Kingdom,] regional Channel 3 licence shall, in addition, include conditions requiring the news programmes broadcast by the licence holder in compliance with conditions imposed in pursuance of subsection (1) to be programmes provided by [<sup>F32</sup>the appointed news provider] which are—

- (a) presented live, and

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- (b) broadcast simultaneously with the broadcasts of news programmes provided by [<sup>F33</sup>the appointed] news provider which are made by other holders of regional Channel 3 licences in compliance with conditions so imposed.

[<sup>F34</sup>(3) In subsection (2) “appointed news provider” means, subject to subsection (4), the body corporate for the time being appointed for the purposes of subsection (2), from among the bodies corporate nominated by the Commission under section 32, in accordance with conditions included by virtue of section 31A in regional Channel 3 licences.

- (4) A body corporate ceases by virtue of this subsection to be the appointed news provider if its nomination is terminated by the Commission under any provision of section 32.]

#### Textual Amendments

- F31** Words at the beginning of s. 31(2) inserted (24.7.1996) by 1996 c. 55, ss. 74(2)(a), 149(1)(b) (with s. 43(1)(6))
- F32** Words in s. 31(2) substituted (24.7.1996) by 1996 c. 55, ss. 74(2)(b), 149(1)(b) (with s. 43(1)(6))
- F33** Words in s. 31(2)(b) substituted (24.7.1996) by 1996 c. 55, ss. 74(2)(c), 149(1)(b) (with s. 43(1)(6))
- F34** Ss. 31(3)(4) substituted (24.7.1996) by 1996 c. 55, s. 74(3), 149(1)(b) (with s. 43(1)(6))

### [<sup>F35</sup>31A Appointment of news provider by holders of regional Channel 3 licences.

A regional Channel 3 licence shall include conditions requiring the holder of the licence to do all that he can to ensure—

- (a) that arrangements are made between all holders of regional Channel 3 licences (“the relevant licence holders”) for the appointment by them, from among the bodies corporate nominated by the Commission under section 32, and on such terms as the relevant licence holders may agree, of a single body corporate to be the appointed news provider for the purposes of section 31(2), and
- (b) that, so long as he provides his licensed service, an appointment for the purposes of section 31(2) is in force.]

#### Textual Amendments

- F35** S. 31A inserted (24.7.1996) by 1996 c. 55, s. 75(1) (with s.43(1)(6))

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

- C25** S. 31A restricted (24.7.1996) by 1996 c. 55, s. 75(2) (with s. 43(1)(6))

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

[<sup>F36</sup>(1) With a view to enabling them to nominate bodies corporate as eligible for appointment for the purposes of section 31(2), the Commission shall invite bodies appearing to them to be qualified for nomination to make applications to be so nominated.

- (2) Where a body corporate—
- (a) applies to the Commission (whether in pursuance of any such invitation or not) to be nominated under this section as a nominated news provider, and
- (b) appears to the Commission to be qualified for nomination,
- the Commission shall so nominate that body.

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- (3) Subject to subsection (5), any nomination made by the Commission under this section shall remain in force for a period of ten years, and at the end of that period may be renewed by the Commission for a further period of ten years.
- (4) Where the Commission are notified by the holders of licences to provide regional Channel 3 services that the appointment of the appointed news provider is due to expire, or to be renewed or terminated in accordance with the terms of the appointment, the Commission shall review the qualification for nomination of all nominated news providers (including the appointed news provider).
- (5) If on any such review it appears to the Commission that a body is no longer qualified for nomination they shall (subject to subsection (6)) by notice terminate that body's nomination.
- (6) The Commission shall not terminate a body's nomination under subsection (5) unless they have given the body a reasonable opportunity of making representations to them about the proposed termination.]
- (7) Before nominating, or terminating the nomination of, any body under this section the Commission shall consult every person who is the holder of a licence to provide a regional Channel 3 service.
- (8) Any instrument by which a body is nominated under this section shall include conditions—
  - (a) imposing limits on the extent to which persons of any specified class or description may be participants in the nominated news provider;
  - (b) requiring that body to provide the Commission with such information as they may reasonably require for the purpose of determining whether any of those limits has been exceeded; and
  - (c) enabling the Commission to terminate that body's nomination if satisfied that any of those limits has been exceeded;
 and any such instrument may provide for any of those limits to apply only after the expiry of a specified period.
- (9) The limits imposed in pursuance of subsection (8) shall secure—
  - (a) that no person is a participant with more than a 20 per cent. interest in the nominated news provider; <sup>F37</sup> . . .
  - <sup>F37</sup>(b) . . . . .
- (10) Any limit imposed in accordance with subsection (9)(a) shall have effect in relation to a particular participant as if he and every person connected with him were one person; <sup>F38</sup> . . .
  - (a) a person who controls the participant;
  - (b) an associate of the participant or of a person falling within paragraph (a); and
  - (c) a body which is controlled by the participant or by any associate of the participant.
- (11) Subject to the provisions of subsections (9) and (10), the limits imposed in pursuance of subsection (8) shall be such as the Commission may determine.
- (12) A body corporate shall be disqualified for being nominated under this section if, by virtue of any provision in Part II of Schedule 2 to this Act, it would be a disqualified person in relation to any description of licence granted by the Commission; and any

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reference in this section to a body corporate appearing to the Commission to be qualified for nomination is a reference to a body corporate <sup>F39</sup>which—

- (a) in their opinion is or, if appointed, would be effectively equipped and adequately financed to provide high quality news programmes for broadcasting in regional Channel 3 services; and
- (b) appears to them not to be disqualified for being nominated under this section by virtue of this subsection.]

(13) In this section—

- (a) references to a nominated news provider are references to a body corporate for the time being nominated under this section; <sup>F40</sup> . . .
- (b) references to nomination under this section are references to nomination under this section <sup>F41</sup>as eligible for appointment]for the purposes of section 31(2);

<sup>F42</sup>and

- (c) references to the appointed news provider are references to the person for the time being appointed for the purposes of section 31(2) under the arrangements referred to in section 31A(a).]

and subsections (8) to (10) shall be construed in accordance with Part I of Schedule 2 to this Act.

#### Textual Amendments

- F36** S. 32(1) to (6) substituted (24.7.199) by 1996 c. 55, ss. 76(2), 149(1)(b) (with ss. 43(1)(6), 76(6))
- F37** S. 32(9)(b) and the preceding word “and”repealed (24.7.1996) by 1996 c. 55, ss. 76(3), 148(2), 149(1)(i), Sch. 11 Pt. I (with ss. 43(1)(6), 76(6))
- F38** Words in S. 32(10) repealed (1.10.1996) by 1996 c. 55, s. 148(2), Sch. 11 Pt. I (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- F39** Words in S. 32(12) substituted (24.7.1996) by 1996 c. 55, ss. 76(4), 149(1)(b) (with ss. 43(1)(6), 76(6))
- F40** Word in S. 32(13)(a) repealed (1.10.1996) by 1996 c. 55, s. 148(2), Sch. 11 Pt. I (with ss. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1
- F41** Words in S. 32(13)(b) inserted (24.7.1996) by 1996 c. 55, ss. 76(5)(a), 149(1)(b) (with ss. 43(1)(6), 76(6))
- F42** S. 32(13)(c) and the preceding word “and”inserted (24.7.1996) by 1996 c. 55, ss. 76(5)(b), 149(1)(b) (with ss. 43(1)(6), 76(6))

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

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

- (1) Any Channel 3 or Channel 5 licence shall include such conditions as appear to the Commission to be appropriate for securing—
  - (a) that the service provided under the licence accords with the proposals submitted by the licence holder under subsection (3)(b) of section 15; and
  - (b) the implementation of the proposals submitted by him under subsection (3) (c) and (d), or (as the case may) subsection (3)(c) to (e), of that section.
- (2) In subsection (1) the reference to section 15 is, in relation to a Channel 5 licence, a reference to that section as applied by section 29.

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- (3) Any conditions imposed in pursuance of subsection (1) [F43 or section 21A(3) or(4)] may be varied by the Commission with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).

#### Textual Amendments

**F43** Words in S. 33(3) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 14** (with s. 43(1)(6)); S.I. 1996/2120, **art. 4 Sch. 1**

### 34 Schools programmes.

- (1) The Commission shall do all that they can to secure that a suitable proportion of the programmes which are included in Channel 3 services and Channels 4 and 5 (taken as a whole) are schools programmes.
- (2) Accordingly, any Channel 3 licence or licence to provide Channel 4 or 5 may include—
- (a) conditions requiring the licence holder to produce, or finance the production of, schools programmes;
  - (b) conditions requiring the licence holder to acquire schools programmes provided by other persons;
  - (c) conditions requiring the licence holder to ensure that schools programmes included in the licensed service—
    - (i) are of high quality, and
    - (ii) are suitable to meet the needs of schools in the area or areas in the United Kingdom for which the service is provided;
  - (d) conditions specifying the minimum number of hours in term time or within normal school hours that are to be allocated to the broadcasting of schools programmes in the licensed service;
  - (e) conditions requiring the licence holder to provide such material for use in connection with the schools programmes broadcast by him as may be necessary to secure that effective use is made of those programmes in schools; and
  - (f) conditions requiring the licence holder from time to time to consult such bodies or other persons who are concerned with, or have an interest in, schools or the production of schools programmes as the Commission think fit.
- (3) In this section “schools programmes” means programmes which are intended for use in schools.

### 35 Subtitling for the deaf.

- (1) A Channel 3 or Channel 5 licence shall include—
- (a) conditions—
    - (i) specifying the relevant minimum number of hours in a week for the purposes of this section, and
    - (ii) requiring programmes with subtitling to be broadcast in the licensed service during not less than that number of hours in each week; and
  - (b) conditions requiring the holder of the licence to attain such technical standards relating to the provision of subtitling as are specified in the conditions.



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- (2) Subject to subsections (3) and (4), the relevant minimum number of hours in a week for the purposes of this section is—
- (a) in relation to Channel 3 services—
    - (i) for the year which includes the commencement of this section, such number of hours in a week as the Commission shall determine in order to achieve an increase of at least ten per cent. over the average number of hours in a week during which programmes with subtitling were, during the year immediately preceding that year, broadcast on ITV (as defined by section 10(2) of the 1981 Act); and
    - (ii) for each successive year, such number of hours in a week as the Commission shall determine, being a number greater than that for the previous year; and
  - (b) in relation to Channel 5—
    - (i) for the year which includes the commencement of the provision of Channel 5, such number of hours in a week as the Commission shall determine in order to secure that the proportion of the programmes broadcast on Channel 5 in a week which is represented by programmes with subtitling is the same as that achieved in relation to Channel 3 services by virtue of paragraph (a)(i); and
    - (ii) for each successive year, such number of hours in a week as the Commission shall determine, being a number greater than that for the previous year.
- (3) The Commission shall make such determinations under subsection (2) as are appropriate to secure that, subject to subsection (4), the relevant minimum number of hours in a week for the purposes of this section represents—
- (a) in the case of Channel 3 services—
    - (i) for the year 1998, 50 per cent. of the average number of hours in a week during which programmes were, during the year 1997, broadcast on Channel 3; and
    - (ii) for the year 1999 and each successive year, the greatest number of hours in a week that appears to the Commission to be reasonably practicable; and
  - (b) in the case of Channel 5—
    - (i) for the year which includes the fifth anniversary of the date of the commencement of the provision of Channel 5, 50 per cent. of the average number of hours in a week during which programmes were, during the year preceding that year, broadcast on Channel 5; and
    - (ii) for the year following that year and each successive year, the greatest number of hours in a week that appears to the Commission to be reasonably practicable.
- (4) In the case of—
- (a) a Channel 3 service provided as mentioned in section 14(4) or (5), or
  - (b) a Channel 5 service provided as mentioned in section 28(3),
- the relevant minimum number of hours in a week for the purposes of this section shall for any year be such number of hours in a week as the Commission shall determine, being such proportion of the number of hours in a week determined by the Commission for that year under subsection (2)(a) or (b) (as the case may be) as appears to them to be appropriate.

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- (5) As soon as the Commission have made any determination under this section (other than under subsection (2)(a)(i) or (b)(i))—
- (a) they shall notify the holder of every licence to which the determination relates of the determination; and
  - (b) every such licence shall have effect as if for the number for the time being specified in the conditions included in the licence in pursuance of subsection (1)(a)(i) there were substituted the new number determined by the Commission.
- (6) Where any week falls—
- (a) partly within one year to which subsection (2)(a) or (b) applies, and
  - (b) partly within another such year,
- that week shall be treated for the purposes of this section as falling wholly within the earlier of those years.
- (7) The holder of a Channel 3 or Channel 5 licence shall not impose charges for providing subtitling in respect of any programme broadcast in his licensed service.
- (8) In this section—
- “on Channel 3” means in Channel 3 services taken as a whole;
  - “on Channel 5” means in the television broadcasting service referred to in section 28(1), taken as a whole;
  - “subtitling” means subtitling for the deaf, whether provided by means of a teletext service or otherwise.

### **36 Party political broadcasts.**

- (1) Subject to subsection (2), any regional Channel 3 licence or licence to provide Channel 4 or 5 shall include—
- (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and
  - (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Commission may determine.
- (2) Where any determination under section 28(3) is in force, a licence to provide Channel 5 may (but need not) include any such conditions as are mentioned in subsection (1) (a) and (b).
- (3) Without prejudice to the generality of paragraph (b) of subsection (1), the Commission may determine for the purposes of that subsection—
- (a) the political parties on whose behalf party political broadcasts may be made; and
  - (b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.
- (4) Any rules made by the Commission for the purposes of this section may make different provision for different cases or circumstances.

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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 the Commission 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.

### **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>M3</sup>Race Relations Act 1976.

#### **Marginal Citations**

**M3** 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 (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

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- participating in such arrangements to the Director General 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 the Director General of Fair Trading, and
- (b) if he 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.
- (7) Where—
- (a) any such arrangements have come into force in accordance with subsection (6), but
- (b) any networking arrangements are subsequently—

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- (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>F44</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>F45</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),

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

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(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 the Director General of Fair Trading, and
- (b) in the case of any such modification as is so referred to, to inform him 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**

**F44** 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

**F45** 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

### *Enforcement of licences*

#### **40 Power to direct licensee to broadcast correction or apology or not to repeat programme.**

(1) If the Commission 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 apology (or both) under this subsection,

they may (subject to subsection (2)) direct the licence holder to include in the licensed service a correction or apology (or both) in such form, and at such time or times, as they may determine.

(2) The Commission 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 apology 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 the Commission 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.

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- (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.

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

- C26** 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  
S. 40(1)-(4) applied (1.10.1996) by 1996 c. 55, s. 27(8) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

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

- (1) If the Commission 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 the Commission under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
- a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission; or
  - a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a)—
- shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);
- and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Commission 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), the Commission 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 the Commission 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—
- any reference to a Channel 3 licence were a reference to the licence to provide Channel 4; and
  - subsection (1)(b) were omitted.

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

- (1) If the Commission 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 virtue of any provision of this Part, 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 the Commission 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, the Commission will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Commission 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 the Commission 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 the Commission 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 the Commission 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) The Commission 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.



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

- C27** 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**
- C28** 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**
- C29** 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**

VALID FROM 01/04/1997

## [<sup>F46</sup>CHAPTER IIA

### RESTRICTED SERVICES

#### Textual Amendments

- F46** 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, and
- (b) is provided on a frequency or frequencies assigned to the Commission under section 65.

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

- (1) An application for a licence to provide a restricted service shall be made in such manner as the Commission may determine, and shall be accompanied by such fee (if any) as the Commission may determine.
- (2) Subject to subsections (3) and (4), 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.
- (3) In its application to a licence to provide a restricted service, section 41 shall have effect with the omission of subsection (2); 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 shall not exceed whichever is the greater of—
  - (a) £50,000, and
  - (b) the amount determined under subsection (4).
- (4) The amount referred to in subsection (3)(b) is—

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- (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
- (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);

and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).]

### CHAPTER III

#### SATELLITE TELEVISION SERVICES

#### 43 Domestic and non-domestic satellite services.

- (1) In this Part “domestic satellite service” means a television broadcasting service where the television programmes included in the service are transmitted by satellite from a place in the United Kingdom—
- (a) on an allocated frequency, and
  - (b) for general reception in the United Kingdom.
- (2) In this Part “non-domestic satellite service” means—
- (a) a service which consists in the transmission of television programmes by satellite—
    - (i) otherwise than on an allocated frequency, and
    - (ii) for general reception in the United Kingdom or in any prescribed country (or both),
 where the programmes are transmitted from a place in the United Kingdom; or
  - (b) a service which consists in the transmission of television programmes by satellite—
    - (i) from a place which is neither in the United Kingdom nor in any prescribed country, but
    - (ii) for such reception as is mentioned in paragraph (a) (ii),
 if and to the extent that the programmes included in it consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him).
- (3) For the purposes of this Part non-domestic satellite services shall <sup>F47</sup>subject to subsection (3A)]be regarded as provided by the following persons—
- (a) a service falling within subsection (2)(a)—
    - (i) shall, if and to the extent that the programmes included in it consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him), be regarded as

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- provided by that person (whether the programmes are transmitted by him or not), but
- (ii) shall otherwise be regarded as provided by the person by whom the programmes are transmitted; and
- (b) a service falling within subsection (2)(b) shall be regarded as provided by the person by whom the programme material in question is provided as mentioned in that provision.
- [<sup>F48</sup>(3A) For the purposes of this Part, any non-domestic satellite service which is composed by, and transmitted for, a BBC company, a Channel 4 company or an S4C company—
- (a) shall be regarded as provided by that company and not by the relevant broadcasting body (even if the relevant broadcasting body is in a position to determine what is to be included in the service), and
- (b) shall be regarded as provided from a place in the United Kingdom.]
- (4) In this section—
- “allocated frequency” means a frequency allocated to the United Kingdom for broadcasting by satellite;
- “prescribed country” means any country specified in an order made by the Secretary of State for the purposes of this subsection.
- [<sup>F49</sup>“relevant broadcasting body” means—
- (a) in relation to a BBC company, the BBC,
- (b) in relation to a Channel 4 company, the Channel Four Television Corporation, and
- (c) in relation to an S4C company, the Welsh Authority.]

#### Textual Amendments

- F47** Words in s. 43(3) inserted (24.7.1996 for certain purposes otherwise 1.10.1996) by 1996 c. 55, ss. 148(1), 149(1)(h), **Sch. 10 Pt. II para. 15(2)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F48** S. 43(3A) inserted (24.7.1996 for certain purposes otherwise 1.10.1996) by 1996 c. 55, ss. 148(1), 149(1)(h), **Sch. 10 Pt. II para. 15(3)** (with s. 43(1)(6)); S.I. 1996/2120, **art. 4 Sch. 1**
- F49** Definition in s. 43(4) inserted (24.7.1996 for certain purposes otherwise 1.10.1996) at the end of s. 43(4) by 1996 c. 55, ss. 148(1), 149(1)(h), **Sch. 10 Pt. II para. 15(4)** (with s. 43(1)(6)); S.I. 1996/2120, **art. 4 Sch. 1**

## 44 Licensing etc. of domestic satellite services.

- (1) The Commission may grant such licences to provide domestic satellite services as they may determine.
- (2) Without prejudice to the generality of section 3(2), a licence to provide a domestic satellite service may authorise the provision of a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies.
- (3) Subject to subsection (4), the following provisions, namely—
- (a) sections 15 to 20,
- (b) section 33, and
- (c) sections 38 and 40 to 42,
- shall apply in relation to a licence to provide a domestic satellite service as they apply in relation to a licence to provide a Channel 3 service.

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*Status: Point in time view as at 11/12/1996. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Broadcasting Act 1990, Part I is up to date with all changes known to be in force on or before 02 August 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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- (4) In its application in relation to a licence to provide a domestic satellite service—
- (a) section 15(1) shall have effect with the omission of paragraph (b);
  - (b) section 16 shall have effect as if the licence were a licence to provide a regional Channel 3 licence, but with the omission of paragraphs (a) to (f) of subsection (2);
  - (c) section 18 shall have effect with the omission of subsections (3) to (5); and
  - (d) section 20 shall have effect—
    - (i) with the substitution in subsection (1) of “fifteen years” for “ten years” in both places where those words occur, and
    - (ii) with the omission of subsection (4)(b).

#### **45 Licensing etc. of non-domestic satellite services.**

- (1) An application for a licence to provide a non-domestic satellite service shall—
    - (a) be made in such manner as the Commission may determine; and
    - (b) be accompanied by such fee (if any) as they may determine.
  - (2) Where such an application is duly made to the Commission, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 6(1).
  - (3) Section 44(2) shall apply to a licence to provide a non-domestic satellite service as it applies to a licence to provide a domestic satellite service.
  - (4) Any licence granted by the Commission to provide a non-domestic satellite service shall (subject to the provisions of this Part) continue in force for a period of ten years.
  - (5) Subject to subsections (6) [<sup>F50</sup>to] (7), 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.
  - (6) In its application in relation to a licence to provide a non-domestic satellite service, section 41 shall have effect with the omission of subsection (2); 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 [<sup>F51</sup>shall not exceed whichever is the greater of—
    - (a) £50,000, and
    - (b) the amount determined under subsection (6A).
- (6A) The amount referred to in subsection (6)(b) is—
- (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);
- and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).]
- (7) Section 42 shall apply in relation to such a licence with the omission of subsection (7).

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<sup>F52</sup>(8) .....

<sup>F52</sup>(9) .....

**Textual Amendments**

- F50** Word in s. 45(5) substituted (24.7.1996 ) by 1996 c. 55, ss. 88(2), 149(1)(e) (with s. 43(1)(6))
- F51** Words and s. 45(6A) substituted (24.7.1996) for words in s. 45(6) by 1996 c. 55, ss. 88(3), 149(1)(e) (with s. 43(1)(6))
- F52** S. 45(8)(9) repealed (24.7.1996) by 1996 c. 55, ss. 88(4), 149(1)(i), Sch. 11 Pt. I (with s. 43(1)(6))

**[<sup>F53</sup>45A Special power of revocation and suspension on certain grounds in case of licence to provide non-domestic satellite service.**

- (1) If the Commission are satisfied—
  - (a) that the holder of a licence to provide a non-domestic satellite 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 a condition included in the licence in pursuance of section 6(1)(a), 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 the Commission 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 the Commission 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 the Commission 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 the Commission decide not to revoke the licence.
- (3) If the Commission, 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 42 (as applied by section 45(5)) shall not have effect in relation to the revocation of a licence in pursuance of a notice under subsection (1).]

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### Textual Amendments

**F53** S. 45A inserted (1.11.1996) by 1996 c. 55, s. 89 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

## CHAPTER IV

### LICENSABLE PROGRAMME SERVICES

#### 46 Licensable programme services.

(1) In this Part “licensable programme service” means (subject to subsection (2)) a service consisting in the provision by any person of relevant programmes with a view to their being conveyed by means of a telecommunication system—

- (a) for reception in two or more dwelling-houses in the United Kingdom otherwise than for the purpose of being received there by persons who have a business interest in receiving them, or
- (b) for reception at any place, or for simultaneous reception at two or more places, in the United Kingdom for the purpose of being presented there either to members of the public or to a group or groups of persons some or all of whom do not have a business interest in receiving them,

whether the telecommunication system is run by the person so providing the programmes or by some other person, and whether the programmes are to be so conveyed as mentioned in paragraph (a) for simultaneous reception or for reception at different times in response to requests made by different users of the service.

(2) Subsection (1) does not apply to—

- (a) a service where the programmes are provided for transmission in the course of the provision of a television broadcasting service [<sup>F54</sup>a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996), a restricted service] or a non-domestic satellite service;
- (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the <sup>M4</sup>Telecommunications Act 1984; or
- (c) a two-way service, that is to say a service of which it is an essential feature that while visual images or sounds (or both) are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same telecommunication system or (as the case may be) the part of it by means of which they are conveyed, visual images or sounds (or both) for reception by the person providing the service or other persons receiving it (other than signals sent for the operation or control of the service).

(3) It is hereby declared that the person who does either or both of the following things, that is to say—

- (a) uses a telecommunication system for conveying relevant programmes as mentioned in subsection (1), or
- (b) runs a telecommunication system which is so used,

is not to be regarded as providing a licensable programme service in respect of any such programmes except to the extent that they are provided by that person with a view to their being so conveyed by means of that system.

(4) It is hereby also declared that where—

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- (a) any service constitutes such a service as is mentioned in subsection (1), and
- (b) the relevant programmes in respect of which the service is provided are provided for transmission in the course of the provision of any additional service,

that service is licensable under section 47 as a licensable programme service, and not otherwise; and in this subsection “additional service” means an additional service within the meaning of this Part or Part III.

- (5) In this section “relevant programme” means a television programme other than one consisting wholly or mainly of non-representational images (within the meaning of section 2(6)); and for the purposes of this section a person has a business interest in receiving programmes if he has an interest in receiving them for the purposes of his business, trade, profession or employment.

#### Textual Amendments

**F54** Words in s. 46(2)(a) inserted (1.10.1996 for certain purposes only otherwise *prosp.*) by 1996 c. 55, ss. 148(1), 149(2), **Sch. 10 Pt. II para. 16**; S.I. 1996/2120, art. 4, **Sch. 1**

#### Marginal Citations

**M4** 1984 c. 12.

## 47 Licensing etc. of licensable programme services.

- (1) An application for a licence to provide a licensable programme service shall—
- (a) be made in such manner as the Commission may determine; and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) Where such an application is duly made to the Commission, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 6(1) (whether the Commission were to make a determination under subsection (4) below or not).
- (3) Any licence granted by the Commission to provide a licensable programme service shall (subject to the provisions of this Part) continue in force for such period not exceeding ten years as may be specified in the licence.
- (4) If the Commission—
- (a) are satisfied that a particular licensable programme service is to be provided with a view to its programmes being conveyed for reception only in a particular area or locality in the United Kingdom, and
  - (b) consider that it is appropriate to do so,
- they may, when licensing the service, determine that section 6 shall, in its application in relation to that service, have effect subject to the modifications specified in subsection (5).
- (5) The modifications of section 6 are as follows—
- (a) the following paragraph shall be substituted for paragraph (c) of subsection (1)  
—  
“(c) that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on matters

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of political or industrial controversy or relating to current public policy;”

(b) the following subsection shall be substituted for subsection (2)—

“(2) In applying subsection (1)(c) to any licensed service, the programmes included in that service shall be taken as a whole.”

and

(c) the following provisions shall be omitted, namely—

(i) subsections (3) and (5) to (7), and

(ii) in subsection (4), the words from the beginning to “subsection (1),”.

(6) The Commission shall—

(a) draw up, and from time to time review, a code giving guidance as to the rules to be observed in connection with the application of section 6(1)(c) (as substituted by subsection (5) above) in relation to a service in respect of which a determination under subsection (4) above is in force; and

(b) do all that they can to secure that the provisions of the code are observed in the provision of any such service.

(7) The Commission shall publish the code drawn up under subsection (6), and every revision of it, in such manner as they consider appropriate.

(8) Subject to subsections (9) [<sup>F55</sup>to] (10), sections 40 to 42 shall apply in relation to a licence to provide a licensable programme service as they apply in relation to a licence to provide a Channel 3 service.

(9) In its application in relation to such a licence, section 41 shall have effect with the omission of subsection (2); 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 [<sup>F56</sup>shall not exceed whichever is the greater of—

(a) £50,000, and

(b) the amount determined under subsection (9A).

(9A) The amount referred to in subsection (9)(b) is—

(a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and

(b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);

and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).]

(10) Section 42 shall apply in relation to such a licence with the omission of subsection (7).

<sup>F57</sup>(11) .....

<sup>F57</sup>(12) .....



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### Textual Amendments

- F55** Word in S. 47(8) substituted (24.7.1996) by 1996 c. 55, ss. 90(2), 149(1)(e) (with s. 43(1)(6))
- F56** Words in S. 47(9) substituted and subsection (9A) inserted (24.7.1996) by 1996 c. 55, ss. 90(3), 149(1)(e) (with s.43(1)(6))
- F57** S. 47(11)(12) repealed (24.7.1996) by 1996 c. 55, ss. 90(4), 148(2), 149(1)(i), Sch. 11 Pt. I (with s. 43(1)(6))

## 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 telecommunication signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any television broadcasting service provided—
- (a) on any frequency assigned under section 65(1) (other than a frequency which, in pursuance of section 73(2), is assigned by the Commission to a local delivery service within the meaning of Part II), or
  - (b) on any other allocated frequency notified to the Commission by the Secretary of State.
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be—
- (a) where the service is provided on a frequency falling within subsection (1)(a) above, any part of those signals which is not required for the purposes of the provision of that service and is determined by the Commission to be available for the provision of additional services;
  - (b) where the service is provided on a frequency notified to the Commission under subsection (1)(b) above, such part of those signals as the Secretary of State may specify when making the notification;
- and references in this Part to spare capacity shall be construed accordingly.
- (3) The Commission shall, when determining under subsection (2)(a) the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency, have regard—
- (a) if it is a frequency on which a Channel 3 service or Channel 5 is provided, to the obligations of the person providing that service as respects the provision of subtitling in accordance with conditions imposed in pursuance of section 35;
  - (b) if it is a frequency on which Channel 4 is provided, to the need for subtitling to be provided in connection with programmes on Channel 4; and
  - (c) if it is a frequency falling within either of paragraphs (a) and (b), to any need of the person providing the service in question to be able to use part of the signals carrying it for providing services (other than subtitling) which are ancillary to programmes included in the service and directly related to their contents [F58 or relate to the promotion or listing of such programmes].

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- (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—
- (a) to provide subtitling as mentioned in subsection (3)(a) or (b); and
  - (b) to provide any such services as are mentioned in subsection (3)(c).
- (5) The Secretary of State may, when making any notification under subsection (1)(b), specify a date beyond which the frequency in question is not to be used for the provision of additional services; and any such notification shall accordingly cease to have effect on that date.
- (6) In this section—
- “allocated frequency” means a frequency allocated to the United Kingdom for the provision of television broadcasting services;
- “subtitling” means subtitling for the deaf provided by means of a teletext service; and
- “telecommunication signals” means anything falling within paragraphs (a) to (d) of section 4(1) of the <sup>M5</sup>Telecommunications Act 1984 (meaning of “telecommunication system”).

#### Textual Amendments

**F58** Words in S. 48(3)(c) inserted (1.11.1996) by 1996 c. 55, s. 87 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

#### Marginal Citations

**M5** 1984 c. 12.

## 49 Licensing of additional services.

- (1) Subject to subsection (2), the Commission shall do all that they can to secure that, in the case of each of the following frequencies, namely—
- (a) any frequencies falling within section 48(1)(a) on which television broadcasting services are provided, and
  - (b) any frequencies notified to the Commission under section 48(1)(b),
- 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 the Commission in accordance with this section.
- (2) The Commission shall do all that they can to secure, in relation to the combined spare capacity available for the provision of additional services on frequencies on which Channel 3 services and Channel 4 are respectively provided, that a single teletext service is provided on that spare capacity; but any such service shall be provided only on so much of that spare capacity as the Secretary of State may approve.
- (3) In relation to so much of any such service as is provided for reception wholly or mainly in Wales, references in subsection (2) to any such combined spare capacity as is there mentioned shall be construed as references to the spare capacity available for the provision of additional services on frequencies on which S4C is provided; and the Secretary of State shall exercise his powers under section 48(1)(b) and (2)(b) in such manner as he considers appropriate to take account of this subsection.

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- (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 the Commission 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 the Commission 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 broadcasting service is provided, and
  - (b) 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.
- (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 the Commission.
- (10) In this Part “additional services licence” means a licence to provide additional services.

## **50 Applications for additional services licences.**

- (1) Where the Commission 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) (subject to the approval of the Secretary of State) 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

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- (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) The Commission 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 49(5);
  - (c) the applicant’s cash bid in respect of the licence; and
  - (d) such information as the Commission 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 the Commission may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission 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 the Commission consider appropriate.
- (7) The provisions of this section and sections 51 and 53 shall, in relation to the teletext service referred to in section 49(2), have effect subject to the provisions of Schedule 5 to this Act.

## **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, the Commission 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—

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- (a) that the technical plan submitted under section 50(3)(b) is, so far as it involves the use of any telecommunication system, acceptable to the relevant licensing authorities; 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 the Commission that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Before forming any view as to whether the requirement specified in subsection (1) (a) is satisfied in the case of an applicant the Commission shall consult the relevant licensing authorities.
  - (3) Subject to subsection (4), [<sup>F59</sup>section s17 and 17A] shall apply in relation to an additional services licence as [<sup>F59</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 the Commission 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 the Commission that none of the services in question will be provided once the licence has come into force, or
    - (b) the Commission for any other reason have reasonable grounds for believing that none of those services will be so provided,then, subject to subsection (6)—
    - (i) the Commission 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 the Commission 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.
  - (7) In this section “the relevant licensing authorities” means the Secretary of State and the Director General of Telecommunications.

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### Textual Amendments

**F59** 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

## 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 the Commission (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 the Commission 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 the Commission 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.

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

- (1) A licence for the provision of additional services on a frequency notified to the Commission under section 48(1)(b) shall not continue in force beyond such date as may be specified by the Secretary of State in relation to that frequency under section 48(5); and a licence for the provision of such services on a frequency assigned under section 65(1)—
  - (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 the relevant date.
- (3) In its application to a licence for the provision of additional services on a frequency used for the broadcasting of a domestic satellite service—
  - (a) subsection (1) shall have effect with the substitution of “fifteen years” for “ten years” in both places where those words occur; and
  - (b) subsection (2) shall have effect with the substitution of “five years” for “four years”.
- (4) Where an application is made for the renewal of a licence under subsection (1) before the relevant date, the Commission 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 the Commission, 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 the Commission—

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- (a) shall determine an amount which is to be payable to the Commission 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 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 the Commission may specify under paragraph (b) either of the things mentioned in section 50(2).
- (8) The amount determined by the Commission under subsection (7)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 52(1)(a) if they were granting a fresh licence to provide the additional services in question.
- (9) Where the Commission 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 the Commission 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 the Commission 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.

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

- (1) An additional services licence may include such conditions as the Commission 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.
- (2) Before imposing any conditions in pursuance of subsection (1) the Commission shall consult the relevant licensing authorities (within the meaning of section 51).



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## **55 Enforcement of additional services licences.**

- (1) If the Commission 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 the Commission 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 the Commission.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)—
  - (a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period falling within the relevant period (as determined in accordance with section 52(2)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);and, in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Commission 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).

## **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—
  - (a) shall be known as Sianel Pedwar Cymru (or S4C); and
  - (b) shall be constituted in accordance with, and have the functions conferred by, this Act;and in this Act references to the Welsh Authority are references to that authority.
- (2) The Welsh Authority shall consist of—
  - (a) a chairman appointed by the Secretary of State; and
  - (b) 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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## 57 Function and duties of Welsh Authority.

- (1) The function of the Welsh Authority shall be to provide a television broadcasting service of high quality for reception wholly or mainly in Wales to be known as Sianel Pedwar Cymru (or S4C); and in this Part references to S4C are references to that service.

[<sup>F60</sup>(1A) The Welsh Authority shall also have power—

- (a) (subject to and in accordance with Part I of the Broadcasting Act 1996) to provide a further service as a qualifying service (within the meaning of that Part), and to arrange for the broadcasting of that service in digital form, and
- (b) to establish qualifying companies, to purchase or otherwise acquire shares, stocks or other securities of qualifying companies and to assist any qualifying company.

(1B) In subsection (1A)(b) “qualifying company” means any company (whether incorporated under the law of the United Kingdom or of any other country) which is or will be wholly or mainly engaged in one or more of the following activities—

- (a) the provision of one or more services which are licensed by the Commission or by the Radio Authority or which, if provided in the United Kingdom, would be required to be so licensed,
- (b) activities incidental to such provision, and
- (c) the holding of shares in any other company which is wholly or mainly engaged in such provision or in activities incidental to such provision.]

(2) It shall be the duty of the Welsh Authority—

- (a) to provide S4C as a public service for disseminating information, education and entertainment;
- (b) to ensure that a substantial proportion of the programmes broadcast on S4C are in Welsh and that the programmes broadcast on S4C between 6.30 pm and 10 pm consist mainly of programmes in Welsh; and
- (c) to ensure that the programmes in Welsh which are broadcast on S4C maintain—
  - (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
  - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.

(3) The Welsh Authority shall secure that, during any period allocated by them to the broadcasting of a programme not in Welsh, the programme broadcast by them on S4C is normally a programme which is being, has been or is to be broadcast on Channel 4.

(4) The Welsh Authority may use part of the signals carrying S4C to provide—

- (a) subtitling in connection with programmes on S4C, and
- (b) other services which are ancillary to such programmes and directly related to their contents;

and in this subsection “subtitling” means any subtitling provided by means of a teletext service.

(5) In this section and section 58 “programme” does not include an advertisement.

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#### Textual Amendments

**F60** S. 57(1A)(1B) inserted (1.10.1996) by 1996 c. 55, s. 84(3) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

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

**C30** S. 57(1A)(a) applied (1.10.1996) by 1996 c. 55, s. 84(3) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**C31** S. 57(4) applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

### 58 Sources of programmes for S4C.

- (1) For the purpose of enabling the Welsh Authority to comply with their duty under section 57(2)(b) it shall be the duty of the BBC to provide the Authority (free of charge) with sufficient television programmes in Welsh to occupy not less than ten hours' transmission time per week, and to do so in a way which meets the reasonable requirements of the Authority.
- (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 comply with section 57(3); 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.

#### 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

### 59 Requirements to be complied with in relation to S4C programmes.

- (1) The Welsh Authority shall ensure that the following requirements are complied with in relation to S4C, namely—
  - (a) that nothing is included in its programmes 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;

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- (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality;
  - (c) that due impartiality is preserved on the part of the Authority as respects matters of political or industrial controversy or relating to current public policy;
  - (d) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those watching the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and
  - (e) that its programmes do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.
- (2) In applying subsection (1)(c) a series of programmes may be considered as a whole.
- (3) Without prejudice to the generality of subsection (1), the Welsh Authority shall ensure that there are excluded from the programmes broadcast on S4C all expressions of the views and opinions of the Authority on matters (other than broadcasting) which are of political or industrial controversy or relate to current public policy.
- (4) The code referred to in section 6(3) shall have effect in relation to the application of subsection (1)(c) above in relation to S4C as it has effect in relation to the application of section 6(1)(c) in relation to a licensed service; and the code referred to in section 7 shall have effect in relation to S4C as it has effect in relation to a licensed service.
- (5) The Welsh Authority shall observe the provisions of those codes (as they have effect in accordance with subsection (4)) in the provision of S4C.

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

**C33** S. 59 applied (1.10.1996) by 1996 c. 55, s. 29(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**60 Advertising on S4C.**

- (1) The Welsh Authority shall ensure that the following rules are complied with in relation to S4C, namely—
- (a) S4C must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or
    - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in S4C there must be no unreasonable discrimination either against or in favour of any particular advertiser; and

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- (c) (except in the case of any programme to which the Welsh Authority determine that this paragraph is not to apply) S4C must not include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the Welsh Authority are prohibited from advertising by virtue of subsection (2) or (4) below.
- (2) The code under section 9 shall have effect in relation to advertisements broadcast on S4C as it has effect in relation to advertisements broadcast on Channel 4; and the Welsh Authority shall observe the provisions of that code (as it so has effect) in the provision of S4C.
- (3) Where the Commission give any directions under subsection (7) of that section to the Channel Four Television Corporation, they shall send a copy of those directions to the Welsh Authority; and, so long as the directions remain in force, the Welsh Authority shall, in broadcasting advertisements on S4C, give effect to the provisions of the directions as if they were provisions regulating the times when advertisements are to be allowed to be broadcast on S4C.
- (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; 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.
- (6) After consultation with the Welsh Authority the Secretary of State may make regulations amending, repealing or adding to the rules specified in subsection (1); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.

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

C34 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>F61</sup>61 Funding of Welsh Authority.**

- (1) The Secretary of State shall, in the year 1998 and in each subsequent year, pay to the Welsh Authority the prescribed amount as increased by the appropriate percentage.
- (2) In this section “the prescribed amount” means the 1997 amount or such amount as may from time to time be prescribed under subsection (4).
- (3) In this section “the 1997 amount” means the amount paid by the Secretary of State to the Welsh Authority by way of interim payment for the year 1997 (under this section as originally enacted).
- (4) The Secretary of State may, if he is satisfied that it is appropriate to do so having regard to the cost to the Welsh Authority of transmitting S4C and the service referred to in section 57(1A)(a), by order provide that the prescribed amount is to be an amount which is greater than the 1997 amount and is specified in the order.

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- (5) Before making an order under subsection (4) the Secretary of State shall consult the Welsh Authority.
- (6) In this section “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 November 1996, 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” has the same meaning as in section 19(10).
- (7) Any sums required by the Secretary of State under this section shall be paid out of money provided by Parliament.
- (8) An order shall not be made under subsection (4) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F61** S. 61 substituted (24.7.1996) by 1996 c. 55, ss. 80(1), 149(1)(c) (with s. 43(1)(6), 80(3))

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

**C35** S. 61(3)(4) restricted (24.7.1996) by 1996 c. 55, ss. 80(4), 149(c)

### [<sup>F62</sup>61A Welsh Authority public service fund.

- (1) The Welsh Authority shall not exercise their powers under section 57(1A)(b) before such date (in this section referred to as “the notified date”) as they may notify to the Secretary of State for the purposes of this section.
- (2) All amounts received by the Welsh Authority under section 61 on or after the notified date 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 their functions under section 57(1) or (1A)(a).
- (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 on S4C or in the service referred to in section 57(1A)(a).
- (5) On the notified date—
  - (a) all the assets then held by the Welsh Authority other than cash, together with the appropriate proportion of any cash then held by them, shall be taken to be comprised in the public service fund, and
  - (b) the remainder of any cash then held by the Authority shall be taken to be comprised in a general fund.
- (6) In subsection (5)(a) “the appropriate proportion” means the proportion which, in the last financial year in respect of which a statement of accounts has been prepared under paragraph 12(1) of Schedule 6 before the notified date, the total amount received by

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the Welsh Authority under section 61 bears to the total amount of its income from all sources.]

**Textual Amendments**

**F62** S. 61A inserted (1.10.1996) by 1996 c. 55, s. 81(1); S.I. 1996/2120, art. 4 Sch. 1

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

The Welsh Authority shall provide the Commission with such forecasts, estimates, information and documents as the Commission may reasonably require for the purpose of enabling them to perform their functions under [<sup>F63</sup>section 26]

**Textual Amendments**

**F63** Words in S. 62 substituted (24.7.1996) by 1996 c. 55, ss. 80(2), 149(1)(c) (with s. 80(3))

**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.

**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—

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- (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)**

**C36** 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

#### **65 Assignment of frequencies by Secretary of State.**

- (1) The Secretary of State may by notice assign to the Commission, for the purpose of the provision of services falling to be licensed by them under this Part or Part II, such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more of those services.
- (2) Any frequency assigned by the Secretary of State under subsection (1) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (3) The Secretary of State may by notice assign to the Welsh Authority for the purpose of the provision of S4C such frequencies as he may determine; and any such frequencies shall be taken to be so assigned for the purpose only of being used for the provision of that service and any services which they are authorised to provide by virtue of section 57(4).
- (4) The Secretary of State may by notice revoke the assignment under subsection (1) or (3) of any frequency specified in the notice, and (in the case of a frequency assigned to the Commission) may do so whether or not the frequency is for the time being one on which there is being provided a service licensed under this Part or Part II.

#### **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 for general reception 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 the Commission 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 the Commission to be appropriate for securing that the costs incurred in respect of the distribution of



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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 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 for general reception.

- (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 the Commission 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) the Commission 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.

#### [<sup>F64</sup>66A Enforcement of licences held by BBC companies.

- (1) Where the Commission—
  - (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),the Commission 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,
  - (b) by section 44(3), in relation to a licence to provide a domestic satellite service,
  - (c) by section 45(5), in relation to a licence to provide a non-domestic satellite service,

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- (d) by section 47(8), in relation to a licence to provide a licensable programme service, or
- (e) by section 55(4), in relation to an additional services licence.]

#### Textual Amendments

**F64** S. 66A inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1)(f), Sch. 8 para. 3

### 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.

### 68 Certain receipts of Commission to be paid into Consolidated Fund.

- (1) Where, in respect of any licence granted under this Part or Part II, the Commission receive any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Commission but shall—
  - (a) if the licence is for the provision of a service for any area in Great Britain, be paid into the Consolidated Fund of the United Kingdom;
  - (b) if the licence is for the provision of a service for Northern Ireland, be paid into the Consolidated Fund of Northern Ireland; or
  - (c) if the licence is for the provision of a service for the whole or part of Great Britain and for the whole or part of Northern Ireland, be paid into both of those Funds in such proportions as the Commission consider appropriate.
- (2) The amounts referred to in subsection (1) are—
  - (a) any amount payable to the Commission by virtue of section 19(1), 52(1) or 77(1);
  - (b) any amount payable to them by virtue of section 18(3); and
  - (c) any amount payable to them by virtue of section 41(1)(a) or 55(1).
- (3) Any reference in subsection (2)(a), (b) or (c) to any provision of this Part includes a reference to that provision as applied by any other provision of this Part or Part II.
- (4) Subsection (1) shall not be construed as applying to any amount which is required by the Commission for the making of an adjustment in respect of an overpayment made by any person.
- (5) Any amount payable by any person to the Commission under or by virtue of this Part or Part II shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of a licence granted under this Part or Part II, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (6) The Commission shall, in respect of each financial year, prepare an account showing—
  - (a) all such amounts falling within subsection (1) as have been received by them, and
  - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,

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and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

## 69 Frequency planning and research and development.

- (1) The Commission may make arrangements for such work relating to frequency planning to be carried out as they consider appropriate in connection with the discharge of their functions.
- (2) Any such work shall be directed towards securing that the frequencies assigned to the Commission under this Act are used as efficiently as is reasonably practicable.
- (3) The Commission may—
  - (a) make arrangements for such research and development work to be carried out as they consider appropriate in connection with the discharge of their functions;
  - (b) promote the carrying out by other persons of research and development work relating to television broadcasting.
- (4) The Commission shall consult the persons holding licences under this Part or Part II <sup>F65</sup>or Part I of the Broadcasting Act 1996] as to the arrangements to be made by the Commission in pursuance of subsection (3)(a).
- (5) The Commission shall secure that, so far as is reasonably practicable—
  - (a) any work carried out under arrangements made in pursuance of subsection (1) or (3) is carried out, under the supervision of the Commission, by persons who are neither members nor employees of the Commission; and
  - (b) any work carried out under arrangements made in pursuance of subsection (3) (a) is to a substantial extent financed by persons other than the Commission.

### Textual Amendments

**F65** Words in S. 69(4) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 3** (with s. 43(1) (6)); S.I. 1996/2120, art. 4, **Sch. 1**

## 70 Representation by Commission of Government and other interests in connection with broadcasting matters.

The functions of the Commission shall include representing, at the request of the Secretary of State—

- (a) Her Majesty’s Government in the United Kingdom, and
  - (b) persons providing television programme services,
- on bodies concerned with the regulation (whether nationally or internationally) of matters relating to television broadcasting.

## 71 Interpretation of Part I.

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

“the 1981 Act” means the <sup>M6</sup>Broadcasting Act 1981;

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“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 by the Commission 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;

“the Commission” means the Independent Television Commission established by section 1;

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

“domestic satellite service” has the meaning given by section 43(1);

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

“licensable programme service” has the meaning given by section 46(1);

“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;

“non-domestic satellite service” has the meaning given by section 43(2);

“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;

“S4C” means the television broadcasting service referred to in section 57(1), and “on S4C” means in that service;

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

“television broadcasting service” has the meaning given by section 2(5);

“television programme service” has the meaning given by section 2(4).

- (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 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.

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**Marginal Citations**

**M6** 1981 c. 68.

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