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Broadcasting Act 1990

1990 CHAPTER 42

^{F1}PART I

INDEPENDENT TELEVISION SERVICES

CHAPTER 1

REGULATION BY COMMISSION OF TELEVISION SERVICES GENERALLY

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
 - (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).

[^{F1}(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.]

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- (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 ^{M1}Wireless Telegraphy Act 1949 or section 7 of the ^{M2}Telecommunications Act 1984 in connection with the provision of that service.

Textual Amendments

F1 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;
 - (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—

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- (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),
 - (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;

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- (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.
- [^{F2}(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.
 - [^{F3}(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.
 - (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);

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- (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.]

[^{F4}(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..

^{F4}(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, [^{F5}or
(c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,]

being [^{F6}(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

- F2** S. 5(2A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(2)**
F3 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**
F4 S. 5(6C)(6D) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(3)**
F5 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**
F6 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)

- C1** S. 5(1) modified (1.11.1996) by 1996 c. 55, s. 143(1)(2); S.I. 1996/2120, art. 5, **Sch. 2**
C2 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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