



# Broadcasting Act 1990

## 1990 CHAPTER 42

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

#### INDEPENDENT TELEVISION SERVICES

### 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.
- (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.

*Status: Point in time view as at 20/06/2003.*

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- (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
    - (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—

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- (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,
    - (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

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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 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;

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- (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 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.

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- (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 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

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- 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>F1</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—
- (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.

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- (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

**F1** 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,
 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.



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

- C1 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.
- (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

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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>F2</sup>Office for National Statistics].

#### Textual Amendments

**F2** Words in S. 19(10) substituted (1.4.1996) by [S.I. 1996/273, art. 5\(1\)](#), [Sch. 2 para. 25](#)

## 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.

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- (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 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—

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- (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;

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

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- (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>F3</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,
  - (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.

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- (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.
- (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

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- (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

**F3** 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.

**Status:**

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**Changes to legislation:**

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