



# Broadcasting Act 1990

## 1990 CHAPTER 42

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

#### INDEPENDENT TELEVISION SERVICES

#### CHAPTER II

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

##### *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 be) 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.
- (3) Any conditions imposed in pursuance of subsection (1) [<sup>F1</sup>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**

- F1** 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**

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### **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.
- (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

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- (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.
- (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—

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- (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) [<sup>F2</sup>but subject to section 14 of the Registration of Political Parties Act 1998 (prohibition of broadcasts by unregistered parties)], 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.

#### Textual Amendments

**F2** Words in s. 36(3) inserted (24.3.1999) by 1998 c. 48, s. 23, **Sch. 3 para. 3**; S.I. 1999/393, **art. 2**

### 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—

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- (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>M1</sup>Race Relations Act 1976.

#### **Marginal Citations**

**M1** 1976 c. 74.

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

- (1) This section has effect with respect to the making of arrangements which—
  - (a) apply to all the holders of regional Channel 3 licences, and
  - (b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services,being arrangements made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of such services which is able to compete effectively with other television programme services provided in the United Kingdom; and any such arrangements are referred to in this section as “networking arrangements”.
- (2) Any application for a regional Channel 3 licence shall, in addition to being accompanied by any such proposals as are mentioned in section 15(3)(b) to (e), be accompanied by the applicant’s proposals for participating in networking arrangements made under this section; and—
  - (a) where a person has duly made such an application, the Commission—
    - (i) shall, as soon as reasonably practicable after the closing date for applications for the licence, send details of his proposals for participating in such arrangements to the 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

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- (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—
    - (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).

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(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>F3</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>F4</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
- (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—

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- (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

- F3** 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
- F4** 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



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