



Broadcasting Act 1990

1990 CHAPTER 42

^{F1}PART I

INDEPENDENT TELEVISION SERVICES

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 [^{F1}a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996), a restricted service][^{F2}, a satellite television service or an EEA satellite service];

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- (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the ^{M1}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—
- (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.
- [^{F3}(6) In this section “EEA satellite service” means any service which—
- (a) consists in the transmission of television programmes by satellite, and
 - [is provided by a person who for the purposes of Council Directive [89/552/EEC](#)
 - ^{F4}(b) is under the jurisdiction of an EEA State other than the United Kingdom.]]

Textual Amendments

- F1** Words in S. 46(2)(a) inserted (1.10.1996 for certain purposes otherwise 1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. II para. 16**; S.I. 1996/2120, art. 4, **Sch. 1**; S.I. 1997/1005, **art. 4**
- F2** Words in S. 46(2)(a) substituted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 7(2)**
- F3** S. 46(6) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 7(3)**
- F4** S. 46(6)(b) substituted (30.12.1998) by S.I. 1998/3196, reg. 2, **Sch.**

Marginal Citations

- M1** 1984 c. 12.

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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 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.

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- (8) Subject to subsections (9) [^{F5}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 [^{F6}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).

^{F7}(11)

^{F7}(12)

Textual Amendments

- F5** Word in S. 47(8) substituted (24.7.1996) by 1996 c. 55, ss. 90(2), 149(1)(e) (with s. 43(1)(6))
- F6** 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))
- F7** 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))

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