



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

#### CHAPTER I

##### REGULATION BY AUTHORITY OF INDEPENDENT RADIO SERVICES GENERALLY

##### *Establishment of Radio Authority*

#### **83 The Radio Authority.**

- (1) There shall be an authority to be called the Radio Authority (in this Part referred to as “the Authority”).
- (2) The Authority 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 four nor more than ten, as he may from time to time determine.
- (3) Schedule 8 to this Act shall have effect with respect to the Authority.

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

- C1** [S. 83\(2\)\(b\)](#): 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](#)

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### *Function of Authority*

#### **84 Regulation by Authority of independent radio services.**

(1) It shall be the function of the Authority to regulate, in accordance with this Part, the provision of the following services, namely—

- (a) sound broadcasting services to which this section applies and which are provided from places in the United Kingdom;
- (b) licensable sound programme services (as defined by section 112(1)) which are provided from places in the United Kingdom by persons other than the BBC; and
- (c) additional services (as defined by section 114(1)) which are provided from places in the United Kingdom;

and in this Part “independent radio service” means a service falling within paragraph (a), (b) or (c) above.

(2) This section applies to—

- (a) any sound broadcasting service which is provided, on a frequency or frequencies assigned to the Authority under subsection (4)—
  - (i) for any such minimum area of the United Kingdom as the Authority may determine in accordance with section 98(2) (a “national service”), or
  - (ii) for a particular area or locality in the United Kingdom (a “local service”), or
  - (iii) for a particular establishment or other defined location, or a particular event, in the United Kingdom (a “restricted service”); and
- (b) any sound broadcasting service (other than one provided by the BBC) which consists—
  - (i) in the transmission of sound programmes by satellite from a place in the United Kingdom for general reception there, or
  - (ii) in the transmission of such programmes by satellite from a place outside the United Kingdom for general reception there, if and to the extent that the programmes included in the service 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),

and any such service is referred to in this Part as a “satellite service”.

(3) For the purposes of this Part satellite services shall [<sup>F1</sup>subject to subsection (3A)] be regarded as provided by the following persons—

- (a) a service falling within subsection (2)(b)(i)—
  - (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 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

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- (b) a service falling within subsection (2)(b)(ii) shall be regarded as provided by the person by whom the programme material in question is provided as mentioned in that provision.
- [<sup>F2</sup>(3A) For the purposes of this Part, any 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.
- (3B) In subsection (3A) “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.]
- (4) For the purposes of this Part the Secretary of State may by notice assign to the Authority 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 independent radio services.
- (5) Any frequency assigned by the Secretary of State under subsection (4) 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.
- (6) The Secretary of State may by notice revoke the assignment under subsection (4) of any frequency specified in the notice, and may do so whether or not that frequency is for the time being one on which an independent radio service is being provided.

#### Textual Amendments

- F1** Words in [S. 84\(3\)](#) inserted (24.7.1996 for certain purpose otherwise 1.10.1996) by [1996 c. 55, ss. 148\(1\), 149\(1\), Sch. 10 Pt. II para. 19\(2\)](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- F2** [S. 84\(3A\)\(3B\)](#) inserted (24.7.1996 for certain purposes otherwise 1.10.1996) by [1996 c. 55, ss. 148\(1\), 149\(1\), Sch. 10 Pt. II para. 19\(3\)](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120, art. 4, Sch. 1](#)

## 85 Licensing functions of Authority.

- (1) Subject to subsection (2), the Authority may, in accordance with the following provisions of this Part, grant such licences to provide independent radio services as they may determine.
- (2) The Authority shall do all that they can to secure the provision within the United Kingdom of—
- (a) a diversity of national services each catering for tastes and interests different from those catered for by the others and of which—
- (i) one is a service the greater part of which consists in the broadcasting of spoken material, and
- (ii) another is a service which consists, wholly or mainly, in the broadcasting of music which, in the opinion of the Authority, is not pop music; and

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- (b) a range and diversity of local services.
- (3) It shall be the duty of the Authority to discharge their functions as respects the licensing of independent radio services in the manner which they consider is best calculated—
  - (a) to facilitate the provision of licensed 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; and
  - (b) to ensure fair and effective competition in the provision of such services and services connected with them.
- (4) Subsection (3)(b) 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.
- (5) The Secretary of State may by order make such amendments of subsection (2)(a) as he considers appropriate—
  - (a) for including in that provision a requirement that one of the national services there referred to should be a service of a particular description, or
  - (b) for removing such a requirement from that provision;
 and (without prejudice to the generality of section 200(2)(b)) any such order may make such consequential amendments of section 98(1)(b)(iii) as the Secretary of State considers appropriate.
- (6) In subsection (2)(a)(ii) “pop music” includes rock music and other kinds of modern popular music which are characterised by a strong rhythmic element and a reliance on electronic amplification for their performance (whether or not, in the case of any particular piece of rock or other such music, the music in question enjoys a current popularity as measured by the number of recordings sold).
- (7) An order shall not be made under subsection (5) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

*General provisions about licences*

**86 Licences under Part III.**

- (1) A licence shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as may be specified in the licence.
- (2) A licence may be granted by the Authority 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; and (without prejudice to the generality of the preceding provision) a licence may be so granted for the provision of a service which to any extent consists in the simultaneous broadcasting of different programmes on different frequencies.
- (3) The following licences, namely—
  - (a) any licence to provide a national, local or satellite service,
  - (b) any licence to provide a licensable sound programme service, and
  - (c) any licence to provide additional services,
 shall not continue in force for a period of more than eight years.
- (4) The Authority—

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- (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 88(1) or (2)(b) or (c) or 89(1).

[<sup>F3</sup>(4A) Where the Authority 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.]

- (5) The Authority 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 Authority about the variation.
- (6) Paragraph (a) of subsection (5) does not affect the operation of section 110(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 102(1) or section 118(1).
- (7) 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 Authority.
- (8) Without prejudice to the generality of subsection (7), the Authority 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.
- (9) 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

**F3** S. 86(4A) inserted (24.7.1996) by 1996 c. 55, s. 136, 149(1)(f), **Sch. 8 para. 5** (with s. 43(1)(6))

#### Marginal Citations

**M1** 1949 c. 54.

**M2** 1984 c. 12.

## 87 General licence conditions.

- (1) A licence may include—
  - (a) such conditions as appear to the Authority 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 enabling the Authority to supervise and enforce technical standards in connection with the provision of the licensed service;

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- (c) conditions requiring the payment by the licence holder to the Authority (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;
  - (d) conditions requiring the licence holder to furnish the Authority, 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;
  - (e) conditions requiring the licence holder, if found by the Authority to be in breach of any condition of his licence, to reimburse to the Authority, in such circumstances as are specified in any conditions, any costs reasonably incurred by them in connection with the breach of that condition;
  - (f) conditions providing for such incidental and supplemental matters as appear to the Authority to be appropriate.
- (2) A licence may in particular include—
- (a) conditions requiring the licence holder—
    - (i) to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified, or
    - (ii) (except to the extent that the Authority 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; and
  - (b) conditions requiring the licence holder to permit—
    - (i) any employee of, or person authorised by, the Authority, or
    - (ii) any officer of, or person authorised by, the Secretary of State,
 to enter any premises which are used in connection with the broadcasting of the licensed service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.
- (3) The fees required to be paid to the Authority by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by the Authority; 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 Authority to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Authority regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 8.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Authority 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 Authority with any information, and
  - (b) in purported compliance with that condition provides them with any information which is false in a material particular,
- he shall be taken for the purposes of sections 110 and 111 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).

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## 88 Restrictions on the holding of licences.

- (1) The Authority 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 Authority 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;
    - (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>F4</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Authority shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]
- (3) Where the Authority—
    - (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 Authority 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 Authority consider necessary or expedient to ensure that where—

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- (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,
- the Authority 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.
- (6) The Authority shall not serve any such notice on the licence holder unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- [<sup>F5</sup>(6C) The Authority 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.
- (6D) Where the Authority 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,
- being (in either case) a change which is such that, if it fell to the Authority 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

- F4** S. 88(2A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1)(f), **Sch. 8 para. 6(2)** (with s. 43(1)(6))
- F5** S. 88(6C)(6D) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1)(f), **Sch. 8 para. 6(3)** (with s. 43(1)(6))

## 89 Disqualification for holding licence on grounds of conviction for transmitting offence.

- (1) Subject to subsection (2), a person shall be disqualified for holding a licence under this Part if within the last five years he has been convicted of—
- (a) an offence under section 1 of the <sup>M3</sup>Wireless Telegraphy Act 1949 (licensing of wireless telegraphy) which involved the making of any transmission by wireless telegraphy otherwise than under and in accordance with a licence under that section;
  - (b) an offence under the <sup>M4</sup>Marine, &c., Broadcasting (Offences) Act 1967; or
  - (c) an offence under section 97 below.
- (2) Subsection (1)(a) and (b) do not apply to any offence committed before 1st January 1989.
- (3) Every licence granted under this Part shall include conditions requiring the holder of the licence to do all that he can to ensure that no person who is disqualified for holding a licence by virtue of subsection (1) is concerned in the operation of any station for wireless telegraphy used in the provision of the licensed service.



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#### Marginal Citations

- M3** 1949 c. 54.  
**M4** 1967 c. 41.

### *General provisions about licensed services*

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

- (1) The Authority 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; and
  - (c) that its programmes do not include any technique which exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons listening to the programmes without their being aware, or fully aware, of what has occurred.
- (2) The Authority shall, in the case of every licensed service which is a national, local, satellite or licensable sound programme service, do all that they can to secure that the service complies with the following additional requirements, namely—
  - (a) the appropriate requirement specified in subsection (3);
  - (b) that (without prejudice to the generality of subsection (1)(b) or (3)(a)) there are excluded from its programmes all expressions of the views and opinions of the person providing the service on matters (other than sound broadcasting) which are of political or industrial controversy or relate to current public policy; and
  - (c) 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 listening to the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (3) The appropriate requirement referred to in subsection (2)(a) is—
  - (a) where the licensed service is a national service, 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;
  - (b) where the licensed service is a local, satellite or licensable sound programme service, that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on such matters.
- (4) In applying subsection (3)(a) to a national service a series of programmes may be considered as a whole; and in applying subsection (3)(b) to a local, satellite or licensable sound programme service the programmes included in that service shall be taken as a whole.
- (5) The Authority shall—

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- (a) draw up, and from time to time review, a code giving guidance—
    - (i) as to the rules to be observed in determining what constitutes a series of programmes for the purposes of subsection (4),
    - (ii) as to the rules to be observed in other respects in connection with the application of subsection (3)(a) in relation to a national service, and
    - (iii) as to the rules to be observed in connection with the application of subsection (3)(b) in relation to a local, satellite or licensable sound programme service; 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 Authority may make different provision in the code for different cases or circumstances.
- (6) The Authority shall publish the code drawn up under subsection (5), and every revision of it, in such manner as they consider appropriate.
  - (7) Nothing in this section or in sections 91 to 96 has effect in relation to any licensed service which is an additional service.

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

**C2** S. 90 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 60(7)(8) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

**91 General code for programmes.**

- (1) The Authority 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 inclusion in programmes of sounds suggestive of violence, particularly in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes;
  - (b) as to the rules to be observed with respect to the inclusion in programmes of appeals for donations; and
  - (c) as to such other matters concerning standards and practice for programmes as the Authority may consider suitable for inclusion in the code;

and the Authority 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 Authority 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 listening to the programmes.
- (3) Before drawing up or revising the code under this section the Authority shall (to such extent as they consider it reasonably practicable to do so) consult every person who is the holder of a licence under this Part.
- (4) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

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

- C3 S. 91 applied (27.7.2000) by S.I. 2000/1864, art. 2, **Sch. para. 5**  
C4 Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9)(10) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

## 92 General provisions as to advertisements.

- (1) The Authority 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 Authority, 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 93.
- (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 Authority for the purposes of section 107.
- (4) After consultation with the Authority 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 Authority shall not act as an advertising agent.

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

- C5 Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9)(10) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

## 93 Control of advertisements.

- (1) It shall be the duty of the Authority—
- (a) after the appropriate consultation, to draw up, and from time to time review, a code—

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- (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 Authority 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 Independent Television Commission,
  - (b) such bodies or persons appearing to the Authority to represent each of the following, namely—
    - (i) listeners,
    - (ii) advertisers, and
    - (iii) professional organisations qualified to give advice in relation to the advertising of particular products,
 as the Authority think fit, and
  - (c) such other bodies or persons who are concerned with standards of conduct in advertising as the Authority think fit,
- and (to the extent that the Authority consider such consultation to be reasonably practicable) consultation with every person who is the holder of a licence under this Part.
- (3) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.
- (4) The Authority 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 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 Authority 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 Authority 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.

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- (7) Directions under this section may be, to any degree, either general or specific and qualified or unqualified.
- (8) The Authority shall, in drawing up or revising the code, 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)**

**C6** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

## 94 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 Authority 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; and it shall be the duty of the Authority 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 Authority 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 Authority to comply with the notice.
- (4) Where the Authority—
  - (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)**

**C7** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1  
**C8** S. 94 amended (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

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## 95 Monitoring by Authority of programmes included in licensed services.

- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Authority 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 42 days, a recording of every programme included in the licensed service;
  - (b) at the request of the Authority, to produce to them any such recording for examination or reproduction;
  - (c) at the request of the Authority, 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 Authority, in the discharge of their duties under this Part as respects licensed services and the programmes included in them, to listen to such programmes in advance of their being included in such services.

### Modifications etc. (not altering text)

**C9** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

## 96 Audience research.

- (1) The Authority shall make arrangements—
  - (a) for ascertaining the state of public opinion concerning programmes included in licensed services; and
  - (b) for the purpose of assisting them to perform their functions under Chapter II in connection with the programmes to be included in national and local services, 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 Authority; and
  - (b) include provision for full consideration by the Authority of the results of any such research.

### Modifications etc. (not altering text)

**C10** Ss. 91-96 applied (1.10.1996) by 1996 c. 55, s. 60(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4 Sch. 1

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### *Prohibition on providing unlicensed independent radio services*

#### **97 Prohibition on providing independent radio services without a licence.**

- (1) Subject to subsection (2), any person who provides any independent radio service without being authorised to do so by or under a licence under this Part shall be guilty of an offence.
- (2) The Secretary of State may, after consultation with the Authority, 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) above, 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.

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

C11 S. 97(1) excluded by S.I. 1990/2536, art. 2(1)

## **CHAPTER II**

### **SOUND BROADCASTING SERVICES**

#### *National services*

#### **98 Applications for national licences.**

- (1) Where the Authority propose to grant a licence to provide a national 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) the period for which the licence is to be granted,
    - (ii) the minimum area of the United Kingdom for which the service is to be provided,
    - (iii) if the service is to be one falling within section 85(2)(a)(i) or (ii), that the service is to be such a service, and

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- (iv) if there is any existing licensed national service, that the service is to be one which caters for tastes and interests different from those already catered for by any such service (as described in the notice);
  - (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 102(1)(c) if he were granted the licence.
- (2) In determining the minimum area of the United Kingdom for which a national service is to be provided the Authority shall have regard to the following considerations, namely—
- (a) that the service in question should, so far as is reasonably practicable, make the most effective use of the frequency or frequencies on which it is to be provided; but
  - (b) that the area for which it is to be provided should not be so extensive that the costs of providing it would be likely to affect the ability of the person providing the service to maintain it.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the applicant's proposals for providing a service that would both—
    - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), and
    - (ii) consist of a diversity of programmes calculated to appeal to a variety of tastes and interests;
  - (b) the fee specified in the notice under subsection (1)(d)(i);
  - (c) 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;
  - (d) the applicant's cash bid in respect of the licence;
  - (e) such information as the Authority may reasonably require—
    - (i) 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
    - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - (f) such other information as the Authority may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under any of paragraphs (a), (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.



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- (6) The Authority 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) the proposals submitted by him under subsection (3)(a); and
  - (c) such other information connected with his application as the Authority consider appropriate.
- (7) In this section “programme” does not include an advertisement.
- (8) In this Part “cash bid”, in relation to a licence, means an offer to pay to the Authority 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).

#### **99 Procedure to be followed by Authority in connection with consideration of applications for national licences.**

- (1) Where a person has made an application for a national licence in accordance with section 98, the Authority shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 100 unless it appears to them—
  - (a) that his proposed service would both—
    - (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, and
    - (ii) consist of such a diversity of programmes as is mentioned in subsection (3)(a) of that section; and
  - (b) that he would be able to maintain that service throughout the period for which the licence would be in force.
- (2) Any reference to an applicant in section 100 (except in section 100(9)(b)) is accordingly a reference to an applicant in whose case it appears to the Authority that the requirements of subsection (1)(a) and (b) above are satisfied.

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

- (1) Subject to the following provisions of this section, the Authority shall, after considering all the cash bids submitted by the applicants for a national 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 Authority 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 Authority 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

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that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to the Authority, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, 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.

- (4) If it appears to the Authority, 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.
- (5) 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.
- (6) In subsections (4) and (5) “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 102(1), or
  - (b) otherwise financing the provision of his proposed service.
- (7) Where the Authority are, by virtue of subsection (4), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (11)) have effect as if that person had not made an application for the licence.
- (8) Where the Authority have awarded a national 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 (9) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (9) The matters referred to in subsection (8)(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 Authority that the requirement specified in section 99(1)(a) was satisfied;
  - (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 Authority’s reasons for the licence having been so awarded; and
  - (d) such other information as the Authority consider appropriate.
- (10) 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 (9) shall have effect as if—
  - (a) paragraph (b) were omitted; and

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- (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (11) Subsections (1) to (6) shall not have effect as mentioned in subsection (7) if the Authority decide that it would be desirable to publish a fresh notice under section 98 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 Authority decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a further licence to provide the service in question.

### **101 Failure to begin providing licensed service and financial penalties on revocation of licence.**

- (1) If at any time after a national licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Authority that he does not intend to provide the service in question, or
  - (b) the Authority 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 Authority shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 100 shall (subject to section 100(11)) 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 Authority 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 Authority revoke a national 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 Authority estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 102(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 122(4), be recoverable by the Authority as a debt due to them from any person who controls that body.

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

**C12** S. 101(3) modified (1.11.1996) by 1996 c. 55, s. 145(6)(b) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

**102 Additional payments to be made in respect of national licences.**

- (1) A national licence shall include conditions requiring the licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
  - (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 98(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), 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 the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.

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- (7) A national licence may include conditions—
- (a) enabling the Authority 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 Authority 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 Central Statistical Office of the Chancellor of the Exchequer.

### **103 Restriction on changes in control over holder of national licence.**

- (1) Where—
- (a) any change in the persons having control over—
    - (i) a body to which a national 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 Authority,
- then (subject to subsection (5)) the Authority 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)—

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“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 Authority 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 national 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 national licence has been awarded but not yet granted were the holder of such a licence.

- (3) The Authority shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(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 98(3)(a) by that body (or, as the case may be, by the person to whom the licence was originally awarded).
- (4) The Authority may refuse so to approve any such change if, in any circumstances not falling within subsection (3), they consider it appropriate to do so.
- (5) The Authority 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.
- (6) Where under subsection (1) the Authority refuse to grant a licence to any body, section 100 shall (subject to section 100(11)) 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 111 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

#### **[<sup>F6</sup>103A Renewal of national licences.**

- (1) A national licence may (subject to the following provisions of this section) be renewed on one occasion for a period of eight years beginning with the date of renewal.
- (2) An application for the renewal of a national licence under subsection (1) may be made by the licence holder not earlier than three 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—
  - (a) if no simulcast radio service provided by the applicant is being broadcast in digital form when the application is made, the Authority shall postpone the consideration of the application until the relevant date or, if earlier, the date on which the broadcasting of such a service in that form begins, and
  - (b) in any other case, the Authority may postpone the consideration of the application for so long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a national licence has been duly made to the Authority, they shall (subject to subsection (5)) grant the application if, but only if—

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- (a) the Authority are satisfied that the applicant would, if his licence were renewed, provide a national service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section),
  - (b) the applicant has given notice to the Authority under section 41(2)(a) of the Broadcasting Act 1996 of his intention to provide a service for broadcasting in digital form, and
  - (c) a simulcast radio service provided by the applicant is being broadcast in digital form or the Authority are satisfied that by the relevant date the applicant has done all that it would in the circumstances be reasonable to expect him to do by that date to procure the broadcasting of such a service within such time as the Authority consider reasonable.
- (5) Section 100(4) to (6) shall apply in relation to an applicant for the renewal of a national licence as those provisions apply in relation to such an applicant as is mentioned in section 100(4), 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 application under this section the Authority—
- (a) may, in a case where a simulcast radio service provided by the applicant is not yet being broadcast in digital form on the relevant date, determine a date by which the broadcasting of such a service in that form must begin;
  - (b) shall determine an amount which is to be payable to the Authority by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (c) may specify a different percentage from that specified under section 98(1)(d) (i) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 102(1)(c) during the period for which the licence is to be renewed.
- (7) The amount determined by the Authority under subsection (6)(b) 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 102(1)(a) if they were granting a fresh licence to provide the national service in question.
- (8) Where the Authority 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 (whether because subsection (3)(a) precluded the consideration of the application before that date or for any other reason), as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (6)(a),
  - (b) the amount determined by them under subsection (6)(b), and
  - (c) any percentage specified by them under subsection (6)(c),
- 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 national licence has been renewed under this section—
- (a) any conditions included in it in pursuance of section 102 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 Authority under subsection (6)(b) were an amount specified in a cash bid submitted by the licence holder, and
  - (ii) subject to any determination made under subsection (6)(c);
  - (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 national licence is originally in force;
  - (c) where the Authority have determined a date under subsection (6)(a), they shall include in the licence as renewed a condition requiring a simulcast radio service to be broadcast in digital form throughout the period beginning with the date determined under subsection (6)(a) and ending with the date on which the licence (as renewed) is to expire; and
  - (d) the reference in section 111(4) to the end of the period for which a national 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) Subsections (6)(a) and (9)(c) do not prejudice the generality of section 48(3)(b) of the Broadcasting Act 1996 (power to vary national licence to include conditions relating to digital broadcasting).
- (11) In this section—
- “simulcast radio service” has the same meaning as in Part II of the Broadcasting Act 1996;
  - “the relevant date”, in relation to a national licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 98(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 national service formerly provided under that licence.]

#### **Textual Amendments**

**F6** S. 103A inserted (24.7.1996) by 1996 c. 55, ss. 92, 149(e) (with s. 43(1)(6))

### *Local and other services*

#### **104 Applications for other licences.**

- (1) Where the Authority propose to grant a licence to provide a local 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 the area or locality in the United Kingdom for which the service is to be provided;
  - (c) inviting applications for the licence and specifying the closing date for applications; and
  - (d) stating the fee payable on any application made in pursuance of the notice.
- (2) Any application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
- (a) the fee specified in the notice under paragraph (d) of that subsection;
  - (b) the applicant’s proposals for providing a service that would—



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- (i) cater for the tastes and interests of persons living in the area or locality for which it would be provided or for any particular tastes and interests of such persons, and
    - (ii) broaden the range of programmes available by way of local services to persons living in that area or locality;
  - (c) such information as the Authority may reasonably require—
    - (i) 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
    - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - (d) such other information as the Authority may reasonably require for the purpose of considering the application.
- (3) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under subsection (2)(b), (c) or (d).
- (4) The Authority shall, at the request of any person and on the payment by him of such sum (if any) as the Authority may reasonably require, make available for inspection by that person any information furnished under subsection (2)(b) by the applicants for a local licence.
- (5) Where the Authority propose, in the case of any local licence which is due to expire (otherwise than by virtue of section 110), to grant a further licence to provide the service in question, they shall, in accordance with subsection (1), publish a notice under that subsection relating to the proposed grant of the further licence to provide that service, unless it appears to them that to do so would not serve to broaden the range of programmes available by way of local services to persons living in the area or locality for which that service has been provided.
- (6) The following applications, namely—
  - (a) an application to be granted a local licence in a case where, in accordance with subsection (5), no notice is to be published under subsection (1), or
  - (b) an application for a licence to provide a satellite or restricted service,shall be made in such manner as the Authority may determine, and shall be accompanied by such fee (if any) as the Authority may determine.
- (7) In this section and sections 105 and 106 “programme” does not include an advertisement.

VALID FROM 01/11/1996

**[<sup>F7</sup>104A Renewal of local licences.**

- (1) A local licence may (subject to the following provisions of this section) be renewed on one occasion for a period of eight years beginning with the date of renewal.
- (2) No application for the renewal of a local licence under subsection (1) may be made before the Authority first publish a notice pursuant to section 50(2) of the Broadcasting Act 1996 inviting applications for a licence to provide a relevant local radio multiplex service.

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- (3) Subject to subsection (2), an application for the renewal of a local licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (4) The applicant must, in his application or at any time before the consideration of his application, nominate—
  - (a) a local digital sound programme service provided or to be provided by him, and
  - (b) a relevant local radio multiplex service,but may not nominate together a local digital sound programme service and a local radio multiplex service if another local licence held by him includes a condition in pursuance of subsection (12) relating to the broadcasting of that local digital sound programme service by that local radio multiplex service.
- (5) Where an application for the renewal of a local licence has been duly made to the Authority, they shall grant the application if—
  - (a) they are satisfied that the applicant would, if his licence were renewed, provide a local service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section), and
  - (b) the nominated local digital sound programme service provided by the applicant is being broadcast by means of the nominated local radio multiplex service.
- (6) Where the condition specified in subsection (5)(a) is satisfied, the Authority may grant the application even though the condition specified in subsection (5)(b) is not satisfied if—
  - (a) the applicant holds a licence to provide local digital sound programme services,
  - (b) a licence to provide the nominated local radio multiplex service has been awarded, and
  - (c) it appears to the Authority that, under a contract between the applicant and the person to whom that licence has been awarded, the applicant is obliged to provide the nominated local digital sound programme service for broadcasting by means of the nominated local radio multiplex service.
- (7) The Authority may in any case postpone consideration of the application until the relevant date.
- (8) If, at the relevant date, the condition specified in subsection (5)(b) is not satisfied, and any of the conditions specified in subsection (6) is not satisfied, the Authority may postpone consideration of the application for such period not exceeding twelve months as they think appropriate.
- (9) Where the Authority postpone consideration of an application under this section for any period beyond the relevant date (the “postponement period”), they shall extend the period for which the licence is in force by a period equal to the postponement period; and section 86(3) shall not limit the powers of the Authority under this subsection.
- (10) On the grant of any application under this section the Authority shall—

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- (a) where the nominated local digital sound programme service provided by the applicant is not being broadcast by means of the nominated local radio multiplex service, determine a date by which that service must have begun to be so broadcast; and
  - (b) specify a fee payable to the Authority in respect of the renewal.
- (11) Where the Authority have granted a person's application under this section they shall formally renew his licence as soon afterwards as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (10)(a), and
  - (b) the renewal fee specified by them under subsection (10)(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.
- (12) Where the Authority renew a licence under this section they shall include in the licence as renewed a condition requiring the licence holder to do all that he can to ensure that the nominated local digital sound programme service is broadcast by means of the nominated local radio multiplex service throughout the period beginning with whichever is the later of—
- (a) the date on which the licence would expire if not renewed, and
  - (b) any date determined by them under subsection (10)(a),
- and ending with the date on which the licence (as renewed) is to expire.
- (13) In this section—
- (a) “local digital sound programme service” has the same meaning as in Part II of the Broadcasting Act 1996;
  - (b) “nominated” means nominated by the applicant under subsection (4);
  - (c) “relevant date”, in relation to a local licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 104(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 local service formerly provided under that licence; and
  - (d) “relevant local radio multiplex service”, in relation to a local licence, means a local radio multiplex service (within the meaning of Part II of the Broadcasting Act 1996) with a coverage area which to a significant extent includes the coverage area of the local service provided under the local licence; and for this purpose “coverage area”, in relation to a service, has the meaning given by paragraph 3A of Part I of Schedule 2.]

#### Textual Amendments

- F7** Ss. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

VALID FROM 01/11/1996

#### **104B** <sup>F8</sup> Special application procedure for local licences.

- (1) Where—

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- (a) a local licence is due to expire (otherwise than by virtue of section 110),
- (b) the local service provided under the licence falls within category B, C or D of the Table in paragraph 9 of Part III of Schedule 2, and
- (c) the Authority propose to grant a further licence to provide the service in question,

the Authority may if they think fit publish a notice under subsection (2) instead of a notice under section 104(1).

- (2) A notice under this subsection is a notice—
  - (a) stating that the Authority propose to grant a further licence to provide a specified local service,
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided,
  - (c) inviting declarations of intent to apply for a licence to provide the service,
  - (d) specifying the closing date for such declarations, and
  - (e) specifying—
    - (i) the application fee payable on any declaration made in pursuance of the notice, and
    - (ii) a deposit of such amount as the Authority may think fit.
- (3) A declaration of intent made in pursuance of a notice under subsection (2) must be in writing and accompanied by the application fee and deposit specified under subsection (2)(e)(i) and (ii).
- (4) Where the Authority receive a declaration of intent in accordance with the provisions of this section from a person other than the licence holder in relation to the service in question, they shall—
  - (a) publish a notice under section 104(1),
  - (b) specify—
    - (i) in relation to persons who have made a declaration of intent in accordance with the provisions of this section, no further application fee, and
    - (ii) in relation to all other applicants, an application fee of the same amount as the fee referred to in subsection (2)(e)(i), and
  - (c) repay the deposit referred to in subsection (2)(e)(ii) to every person—
    - (i) who has made a declaration of intent in accordance with the provisions of this section, and
    - (ii) who duly submits an application in pursuance of the notice referred to in paragraph (a).
- (5) Where the Authority receive a declaration of intent in accordance with the provisions of this section from the licence holder in relation to the service in question, and no such declaration from any other person, they shall—
  - (a) invite the licence holder to apply for the licence in such manner as they may determine (but without requiring any further application fee), and
  - (b) on receiving an application duly made by him, repay to him the deposit referred to in subsection (2)(e)(ii).
- (6) The Secretary of State may by order amend subsection (1) by removing any of the categories of local service for the time being specified in that subsection, or by

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substituting for any of such categories any one or more categories of local service set out in the Table in paragraph 9 of Part III of Schedule 2.

- (7) Any order under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F8** S. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5. Sch. 2

### 105 Special requirements relating to grant of local licences.

Where the Authority have published a notice under section 104(1), they shall, in determining whether, or to whom, to grant the local licence in question, have regard to the following matters, namely—

- (a) the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
- (b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;
- (c) the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and
- (d) the extent to which any application for the licence is supported by persons living in that area or locality.

*Miscellaneous provisions relating to national and local services*

### 106 Requirements as to character and coverage of national and local services.

- (1) A national or local licence shall include such conditions as appear to the Authority to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force, except to the extent that the Authority consent to any departure on the grounds—
  - (a) that it would not narrow the range of programmes available by way of independent radio services to persons living in the area or locality for which the service is licensed to be provided, or
  - (b) that it would not substantially alter the character of the service.
- (2) A national or local licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable.

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- (3) A national licence shall include conditions enabling the Authority, where it appears to them to be reasonably practicable for the licensed service to be provided for any additional area falling outside the minimum area determined by them in accordance with section 98(2), to require the licence holder to provide the licensed service for any such additional area.
- (4) Subject to subsection (5), the Authority may, if they think fit, authorise the holder of a local licence, by means of a variation of his licence to that effect, to provide the licensed service for any additional area or locality adjoining the area or locality for which that service has previously been licensed to be provided.
- (5) The Authority shall only exercise the power conferred on them by subsection (4) if it appears to them that to do so would not result in a substantial increase in the area or locality for which the service in question is licensed to be provided.
- (6) As soon as practicable after the Authority have exercised that power in relation to any service, they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they have exercised that power in relation to that service; and
  - (b) giving details of the additional area or locality for which that service is licensed to be provided.

VALID FROM 01/11/1996

**[<sup>F9</sup>106A Variation of local licence following change of control.**

- (1) Any local licence granted to a body corporate before the commencement of this section shall be taken to include—
  - (a) a condition requiring the body to give the Authority 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 body to provide the Authority, 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 subsection (3).
- (2) Subsection (3) applies in relation to any local licence which—
  - (a) was granted before the commencement of this section,
  - (b) is held by a body corporate, and
  - (c) has not previously been varied under that subsection.
- (3) Where, in relation to any local licence to which this subsection applies—
  - (a) the Authority receive notice, in pursuance of a condition imposed under subsection (1) or section 88(2)(d), of any proposals that may give rise to a relevant change of control, or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to the Authority),

the Authority may vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions as they consider appropriate for the purpose of ensuring that the character of the local service is maintained after the relevant change of control.

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- (4) Subject to subsection (5), any new or varied condition imposed under subsection (3) in relation to any matter may be more onerous than any existing condition imposed under section 106(1) in relation 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.
- (5) The Authority may not under subsection (3) 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 Authority 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 Authority exercise their powers under subsection (3).
- (6) The Authority shall not serve a notice on any body under subsection (3) unless they have given it a reasonable opportunity of making representations to them about the variation.
- (7) Where, in any case falling within paragraph (a) of subsection (3), a notice under that subsection is served before the change to which it relates takes place, the variation shall not take effect until the change to which it relates takes place.
- (8) The power in subsection (1) of section 106 to vary conditions imposed under that subsection includes power to vary conditions imposed under subsection (3).
- (9) In this section “relevant change of control” means a change in the persons having control over the body holding the licence.]

#### Textual Amendments

**F9** S. 106A inserted (1.11.1996) by 1996 c. 55, s. 93 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

### 107 Party political broadcasts.

- (1) A national licence 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 Authority may determine.
- (2) Without prejudice to the generality of paragraph (b) of subsection (1), the Authority 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.

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- (3) Any rules made by the Authority for the purposes of this section may make different provision for different cases or circumstances.

**108 Promotion of equal opportunities in relation to employment by holder of national licence.**

- (1) A national licence 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>M5</sup>Race Relations Act 1976.

**Marginal Citations**

**M5** 1976 c. 74.

*Enforcement of licences*

**109 Power to require scripts etc. or broadcasting of correction or apology.**

- (1) If the Authority are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may serve on him a notice—
- (a) stating that the Authority are so satisfied as respects any specified condition or direction;
  - (b) stating the effect of subsection (2); and
  - (c) specifying for the purposes of that subsection a period not exceeding twelve months.
- (2) If, at any time during the period specified in a notice under subsection (1), the Authority are satisfied that the licence holder has again failed to comply with any such condition or direction as is mentioned in that subsection (whether or not the same as the one specified in the notice), the Authority may direct him—
- (a) to provide the Authority in advance with such scripts and particulars of the programmes to be included in the licensed service as are specified in the direction; and
  - (b) in relation to such of those programmes as will consist of or include recorded matter, to produce to the Authority in advance for examination or reproduction such recordings of that matter as are so specified;
- and a direction under this subsection shall have effect for such period, not exceeding six months, as is specified in the direction.
- (3) If the Authority are satisfied—
- (a) that the holder of a licence has failed to comply with any condition of the licence, and



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- (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 (4)) 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.
- (4) The Authority shall not give any person a direction under subsection (3) unless they have given him a reasonable opportunity of making representations to the Authority about the matters complained of.
- (5) Where the holder of a licence includes a correction or apology in the licensed service in pursuance of a direction under subsection (3), he may announce that he is doing so in pursuance of such a direction.

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

**C13** S. 109 applied (with modifications) (1.10.1996) by 1996 c. 55, ss. 62(10), 66(10) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

**110 Power to impose financial penalty or suspend or shorten licence period.**

- (1) If the Authority are satisfied that the holder of a licence granted under this Chapter has failed 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, they may (subject to the following provisions of this section) serve on him—
- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Authority;
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years; or
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a national licence—
- (a) shall, if such a penalty has not previously been 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 102(2) to (6)); 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 Authority estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of any other licence shall not exceed £50,000.
- (4) The Authority shall not serve on any person such a notice as is mentioned in subsection (1)(a), (b) or (c) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

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- (5) 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 Authority 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.
- (6) It is hereby declared that any exercise by the Authority of their powers under subsection (1) of this section in respect of any failure to comply with any condition or direction shall not preclude any exercise by them of their powers under section 109 in respect of that failure.
- (7) The Secretary of State may by order amend subsection (3) by substituting a different sum for the sum for the time being specified there; and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **111 Power to revoke licences.**

- (1) If the Authority are satisfied—
  - (a) that the holder of a licence granted under this Chapter 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 Authority 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 Authority will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Authority 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 him a notice revoking his licence.
- (4) If the Authority are satisfied in the case of any national 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 Authority are satisfied—
  - (a) that the holder of a licence granted under this Chapter provided them, in connection with his application for the licence, with information which was false in a material particular, or

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- (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 Authority 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 Authority 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.

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

- C14** S. 111 modified (1.10.1996) by 1996 c. 55, s. 43(5) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**  
S. 111 applied (with modifications) (1.10.1996) by 1996 c. 55, ss. 62(10), 66(10) (with s. 43(1)(6));  
S.I. 1996/2120, art. 5, **Sch. 2**  
S. 111 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 59(8)(9) (with s. 43(1)(6)); S.I.  
1996/2120, art. 5, **Sch. 2**  
S. 111 modified (1.10.1996) by 1996 c. 55, s. 66(12) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

**[<sup>F10</sup>111A Enforcement of licences held by BBC companies.**

Where the Authority—

- (a) serve a notice on a BBC company under any provision of section 109, 110 or 111, or
- (b) receive any written representations from a BBC company under section 109(4), 110(4) or 111(8),

the Authority shall send a copy of the direction, notice or representations to the Secretary of State.]

**Textual Amendments**

- F10** S. 111A inserted (24.7.1996) by 1996 c. 55, s. 136, 149(1)(f), **Sch. 8 para. 7** (with s. 43(1)(6))

VALID FROM 01/11/1996

**[<sup>F11</sup>111B Power to suspend licence to provide satellite service.**

(1) If the Authority are satisfied—

- (a) that the holder of a licence to provide a 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 the condition included in the licence in pursuance of section 90(1)(a), and

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- (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 Authority 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 Authority 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 Authority 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 Authority decide not to revoke the licence.
- (3) If the Authority, 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 111 shall not have effect in relation to the revocation of a licence in pursuance of a notice under subsection (1).]

#### **Textual Amendments**

**F11** S. 111B inserted (1.11.1996) by 1996 c. 55, s. 96 (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

## **CHAPTER III**

### **LICENSABLE SOUND PROGRAMME SERVICES**

#### **112 Licensable sound programme services.**

- (1) In this Part “licensable sound programme service” means (subject to subsection (2)) a service consisting in the provision by any person of sound programmes with a view to their being conveyed, by means of a telecommunication system, for reception—
- (a) in two or more dwelling-houses in the United Kingdom, and
  - (b) otherwise than for the purpose of being received there by persons who 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 for simultaneous reception or for reception at different times in response to requests made by different users of the service.

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- (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 sound broadcasting service;
  - (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the <sup>M6</sup>Telecommunications Act 1984; or
  - (c) a two-way service (as defined by section 46(2)(c)).
- (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 sound programmes as mentioned in subsection (1), or
  - (b) runs a telecommunications system which is so used,
- is not to be regarded as providing a licensable sound 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 sound 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 113 as a licensable sound programme service, and not otherwise; and in this subsection “additional service” means an additional service within the meaning of this Part or Part I.
- (5) 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.

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**Marginal Citations**

**M6** 1984 c. 12.

**113 Licensing etc. of licensable sound programme services.**

- (1) An application for a licence to provide a licensable sound programme service shall—
- (a) be made in such manner as the Authority 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 Authority, 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 90(1) and (2).
- (3) Subject to subsection (4), sections 109 to 111 shall apply in relation to a licence to provide a licensable sound programme service as they apply in relation to a licence granted under Chapter II of this Part.
- (4) Section 111 shall apply in relation to such a licence with the omission of subsection (7).

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## CHAPTER IV

### ADDITIONAL SERVICES PROVIDED ON SOUND BROADCASTING FREQUENCIES

#### 114 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 sound broadcasting service provided—
  - (a) on a frequency assigned under section 84(4), or
  - (b) on any other allocated frequency notified to the Authority 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 assigned under section 84(4), any part of those signals which is not required for the purposes of the provision of that service and is determined by the Authority to be available for the provision of additional services;
  - (b) where the service is provided on a frequency notified to the Authority 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 Authority 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 on which a national service is provided, have regard to any need of the person providing that service to be able to use part of the signals carrying it for providing services which are ancillary to programmes included in the service.
- (4) A person holding a national licence shall be taken for the purposes of this Part to be authorised by his licence to provide any such services as are mentioned in subsection (3).
- (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 sound broadcasting services;

“telecommunication signals” means anything falling within paragraphs (a) to (d) of section 4(1) of the <sup>M7</sup>Telecommunications Act 1984 (meaning of “telecommunication system”).

#### Marginal Citations

M7 1984 c. 12.

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## **115 Licensing of additional services.**

- (1) The Authority shall do all that they can to secure that, in the case of each of the following frequencies, namely—
  - (a) any frequencies assigned under section 84(4) and used for the provision of a national service, and
  - (b) any frequencies notified to the Authority under section 114(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 Authority in accordance with this section.
- (2) 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.
- (3) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Authority may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (4) Subsection (3) 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.
- (5) 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 (3) 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.
- (6) Every licence to provide a national service shall include such conditions as appear to the Authority 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 national service is provided, and
  - (b) to any person who is authorised by any such person as mentioned in subsection (3) 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.
- (7) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (6) 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 Authority.
- (8) The holder of a licence to provide a local, restricted or satellite service shall be taken for the purposes of this Part to be authorised by his licence to provide, or to authorise another person to provide, additional services on the frequency on which the licensed service is provided.
- (9) In this Part “additional services licence” means a licence to provide additional services.

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

- (1) Where the Authority 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 period for which the licence is to be granted,
    - (ii) the sound broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (iii) (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
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 118(1)(c) if he were granted the licence.
- (2) The Authority 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 115(3);
  - (c) the applicant's cash bid in respect of the licence; and
  - (d) such information as the Authority 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 Authority may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Authority 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



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- (c) such other information connected with his application as the Authority consider appropriate.

#### **117 Procedure to be followed by Authority 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 116, the Authority 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—
  - (a) that the technical plan submitted under section 116(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 100 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to the Authority 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 Authority shall consult the relevant licensing authorities.
- (3) Subject to subsection (4), section 100 shall apply in relation to an additional services licence as it applies in relation to a national licence.
- (4) In the application of section 100 in relation to an additional services licence—
  - (a) subsection (6) shall have effect with the substitution in paragraph (a) of a reference to section 118(1) for the reference to section 102(1); and
  - (b) subsection (9) shall have effect with the substitution in paragraph (b) of a reference to the requirement specified in subsection (1)(a) above for the reference to the requirement specified in section 99(1)(a).
- (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 Authority that none of the services in question will be provided once the licence has come into force, or
  - (b) the Authority 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 Authority shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 100 (as applied by subsection (3) above) shall, subject to section 100(11), 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 Authority 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

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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.

## **118 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 Authority (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
- (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 116(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 Authority 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 Authority 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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### **119 Additional services not to interfere with other transmissions.**

- (1) An additional services licence may include such conditions as the Authority consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
  - (a) the sound 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 Authority shall consult the relevant licensing authorities (within the meaning of section 117).

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

- (1) If the Authority 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 Authority 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 Authority.
- (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 118(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 Authority estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Authority 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 111 shall apply in relation to an additional services licence as it applies in relation to a licence granted under Chapter II of this Part, but with the omission of subsection (7).

## **CHAPTER V**

### **SUPPLEMENTAL**

### **121 Computation of qualifying revenue.**

Part II of Schedule 7 (which contains provisions relating to the computation of qualifying revenue for the purposes of this Part) shall have effect.

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## **122 Certain receipts of Authority to be paid into Consolidated Fund.**

- (1) Where the Authority receive in respect of any licence any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Authority but shall—
  - (a) if the licence is for the provision of a service for any area, locality, establishment or other place, or for any event, 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 any area, locality, establishment or other place, or for any event, in Northern Ireland, be paid into the Consolidated Fund of Northern Ireland; or
  - (c) if the licence is for the provision of a national or satellite service or any additional services, be paid into both of those Funds in such proportions as the Authority consider appropriate.
- (2) The amounts referred to in subsection (1) are—
  - (a) any amount payable to the Authority by virtue of section 102(1) or 118(1);
  - (b) any amount payable to them by virtue of section 101(3); and
  - (c) any amount payable to them by virtue of section 110(1)(a), 113(3) or 120(1).
- (3) Subsection (1) shall not be construed as applying to any amount which is required by the Authority for the making of an adjustment in respect of an overpayment made by any person.
- (4) Any amount payable by any person to the Authority under or by virtue of this Part 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 any licence under this Part, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (5) The Authority 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,

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.

## **123 Frequency planning and general research and development.**

- (1) The Authority 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 Authority under this Act are used as efficiently as is reasonably practicable.
- (3) The Authority may make arrangements for such research and development work to be carried out as they consider appropriate in connection with the discharge of their functions.
- (4) The Authority shall secure that, so far as is reasonably practicable—

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**Status:** Point in time view as at 24/07/1996. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Broadcasting Act 1990, Part III is up to date with all changes known to be in force on or before 24 June 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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- (a) any work carried out under arrangements made in pursuance of subsection (1) or (3) is carried out, under the supervision of the Authority, by persons who are neither members nor employees of the Authority; and
- (b) any work carried out under arrangements made in pursuance of subsection (3) is to a substantial extent financed by persons other than the Authority.

#### **124 Authority to assist Secretary of State in connection with licensing functions under 1949 Act.**

The Authority shall give to the Secretary of State such information or other assistance as he may reasonably require in connection with his functions under section 1 of the <sup>M8</sup>Wireless Telegraphy Act 1949 as respects the granting, variation or revocation of licences under that section.

#### **Marginal Citations**

**M8** 1949 c. 54.

#### **125 Representation by Authority of Government and other interests in connection with broadcasting matters.**

The functions of the Authority shall include representing—

- (a) Her Majesty’s Government in the United Kingdom, and
- (b) persons providing independent radio services,

on bodies concerned with the regulation (whether nationally or internationally) of matters relating to sound broadcasting.

#### **126 Interpretation of Part III.**

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

“additional service” and “additional services licence” shall be construed in accordance with section 114(1) and section 115(9) respectively;

“the appropriate percentage”, in relation to any year, has the meaning given by section 102(10);

“assigned frequency” means a frequency for the time being assigned to the Authority under section 84(4);

“the Authority” means the Radio Authority established under this Part;

“cash bid” has the meaning given by section 98(8);

“independent radio service” has the meaning given by section 84(1);

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

“licensable sound programme service” has the meaning given by section 112(1);

“local licence” and “national licence” mean a licence to provide a local service and a licence to provide a national service, respectively;

“local service”, “national service”, “restricted service” and “satellite service” shall be construed in accordance with section 84(2);

“sound broadcasting service” means a broadcasting service whose broadcasts consist of transmissions in sound only;

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“spare capacity” shall be construed in accordance with section 114(2).

- (2) Any reference in this Part to an area in the United Kingdom does not include an area which comprises or includes the whole of England; and nothing in this Part shall be read as precluding a local service from being provided for an area or locality that is to any extent comprised in the area or locality for which another local service is to be provided.
- (3) 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.

**Status:**

Point in time view as at 24/07/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Broadcasting Act 1990, Part III is up to date with all changes known to be in force on or before 24 June 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.