



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

### 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
    - (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

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- (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.
- (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.

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- (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 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—

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- (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
  - (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.

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## **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.

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

- C1** 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))—

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- (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.
- (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—

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- (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)—
- “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;

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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>F1</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—
  - (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



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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—
    - (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

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- 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**

**F1** 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—
    - (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

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- (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.
- <sup>F2</sup>(5) .....
- (6) The following applications, namely—
- <sup>F2</sup>(a) .....
  - (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.

**Textual Amendments**

**F2** S. 104(5)(6)(a) repealed (1.11.1996) by 1996 c. 55, ss. 94(2), 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

**[<sup>F3</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.
- (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

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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—
- (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.

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- (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

**F3** 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

### 104B <sup>F4</sup> Special application procedure for local licences.

- (1) Where—
- (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—

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- (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 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

**F4** 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—

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- (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.
- (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

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- (b) giving details of the additional area or locality for which that service is licensed to be provided.

**[<sup>F5</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.
- (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.



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- (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

**F5** 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) [<sup>F6</sup>but subject to section 37 of the Political Parties, Elections and Referendums Act 2000 (prohibition of broadcasts by unregistered parties)], 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.
  - (3) Any rules made by the Authority for the purposes of this section may make different provision for different cases or circumstances.
- [<sup>F7</sup>(4) Before making any rules for the purposes of this section the Authority shall have regard to any views expressed by the Electoral Commission.]

#### Textual Amendments

**F6** Words in s. 107(2) substituted (16.2.2001) by 2000 c. 41, s. 158, Sch. 21 para. 8 (with s. 156(6)); S.I. 2001/222, art. 2, Sch. 1 Pt. I

**F7** S. 107(4) inserted (16.2.2001) by 2000 c. 41, s. 11(2) (with s. 156(6)); S.I. 2001/222, art. 2, Sch. 1 Pt. I

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

**C2** S. 107(1) applied (16.2.2001) by 2000 c. 41, s. 110, Sch. 12 para. 4(1)-(3) (with s. 156(6)); S.I. 2001/222, art. 2, Sch. 1 Pt. I

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## **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>M1</sup>Race Relations Act 1976 [<sup>F8</sup>or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997].

### **Textual Amendments**

**F8** Words in s. 108(2) inserted (4.8.1997) by S.I. 1997/869 (N.I. 6), art. 73, **Sch. 2 para. 4**; S.R. 1997/273, **art. 2(4)**

### **Marginal Citations**

**M1** 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)**

- C3** 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)**

- C4** 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>F9</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**

- F9** S. 111A inserted (24.7.1996) by 1996 c. 55, s. 136, 149(1)(f), **Sch. 8 para. 7** (with s. 43(1)(6))

**[<sup>F10</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
- (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).

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- (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).]

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**Textual Amendments**

**F10** 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

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**Changes to legislation:**

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