



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART X

#### MISCELLANEOUS AND GENERAL

##### *Foreign satellite services*

#### **177 Orders proscribing unacceptable foreign satellite services.**

- (1) Subject to the following provisions of this section, the Secretary of State may make an order proscribing a foreign satellite service for the purposes of section 178.
- (2) If the Independent Television Commission or the Radio Authority consider that the quality of any relevant foreign satellite service which is brought to their attention is unacceptable and that the service should be the subject of an order under this section, they shall notify to the Secretary of State details of the service and their reasons why they consider such an order should be made.
- (3) The Independent Television Commission or (as the case may be) the Radio Authority shall not consider a foreign satellite service to be unacceptable for the purposes of subsection (2) unless they are satisfied that there is repeatedly contained in programmes included in the service matter 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.
- (4) Where the Secretary of State has been notified under subsection (2), he shall not make an order under this section unless he is satisfied that the making of the order—
  - (a) is in the public interest; and
  - (b) is compatible with any international obligations of the United Kingdom.
- (5) An order under this section—
  - (a) may make such provision for the purpose of identifying a particular foreign satellite service as the Secretary of State thinks fit; and

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- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F1</sup>(6) In this section and section 178—

“foreign satellite service” means—

- (a) a service which is provided by a person who is not established in the United Kingdom and which consists wholly or mainly in the transmission by satellite of television programmes which are capable of being received in the United Kingdom, or
- (b) a service which consists wholly or mainly in the transmission by satellite from a place outside the United Kingdom of sound programmes which are capable of being received in the United Kingdom;

“relevant foreign satellite service” means—

- (a) in relation to the Independent Television Commission, a foreign satellite service falling within paragraph (a) of the definition above, and
- (b) in relation to the Radio Authority, a foreign satellite service falling within paragraph (b) of that definition.]

#### Textual Amendments

**F1** [S. 177\(6\)](#) substituted (11.7.1997) by [S.I. 1997/1682](#), reg. 2, [Sch. para. 13](#)

### 178 Offence of supporting proscribed foreign satellite services.

- (1) This section applies to any foreign satellite service which is proscribed for the purposes of this section by virtue of an order under section 177; and references in this section to a proscribed service are references to any such service.
- (2) Any person who in the United Kingdom does any of the acts specified in subsection (3) shall be guilty of an offence.
- (3) Those acts are—
- (a) supplying any equipment or other goods for use in connection with the operation or day-to-day running of a proscribed service;
- (b) supplying, or offering to supply, programme material to be included in any programme transmitted in the provision of a proscribed service;
- (c) arranging for, or inviting, any other person to supply programme material to be so included;
- (d) advertising, by means of programmes transmitted in the provision of a proscribed service, goods supplied by him or services provided by him;
- (e) publishing the times or other details of any programmes which are to be transmitted in the provision of a proscribed service or (otherwise than by publishing such details) publishing an advertisement of matter calculated to promote a proscribed service (whether directly or indirectly);
- (f) supplying or offering to supply any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of programmes transmitted in the provision of a proscribed service.
- (4) In any proceedings against a person for an offence under this section, it is a defence for him to prove that he did not know, and had no reasonable cause to suspect, that the service in connection with which the act was done was a proscribed service.

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- (5) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (6) For the purposes of this section a person exposing decoding equipment for supply or having such equipment in his possession for supply shall be deemed to offer to supply it.
- (7) Section 46 of the <sup>M1</sup>Consumer Protection Act 1987 shall have effect for the purpose of construing references in this section to the supply of any thing as it has effect for the purpose of construing references in that Act to the supply of any goods.
- (8) In this section “programme material” includes—
- (a) a film (within the meaning of Part I of the <sup>M2</sup>Copyright, Designs and Patents Act 1988);
  - (b) any other recording; and
  - (c) any advertisement or other advertising material.

#### Marginal Citations

**M1** 1987 c. 43.

**M2** 1988 c. 48.

### *Unauthorised decoders*

#### **179 Unauthorised decoders for encrypted services etc.**

- (1) In the Copyright, Designs and Patents Act 1988 the following section shall be inserted after section 297—

##### **“297A Unauthorised decoders.**

- (1) A person who makes, imports, sells or lets for hire any unauthorised decoder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for knowing, that the decoder was an unauthorised decoder.
- (3) In this section—
- “apparatus” includes any device, component or electronic data;
  - “decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;
  - “transmission” means any programme included in a broadcasting or cable programme service which is provided from a place in the United Kingdom; and

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“unauthorised”, in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in decoded form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part.”

- (2) In section 299 of the Act of 1988 (fraudulent reception of programmes broadcast from countries or territories outside the United Kingdom)—
- (a) subsection (2) shall cease to have effect; and
  - (b) in subsection (5), after “297” there shall be inserted “, 297A”.

### *Television licensing*

#### **180 Transfer to BBC of functions connected with television licences.**

- (1) The <sup>M3</sup>Wireless Telegraphy Act 1949 (“the 1949 Act”) shall have effect subject to the amendments specified in Part I of Schedule 18 to this Act (by virtue of which functions of the Secretary of State as respects the issue and renewal of television licences are transferred to the BBC).
- (2) Section 3(3) of the <sup>M4</sup>Post Office Act 1969 (refunds in respect of wireless telegraphy licences) shall not apply to sums which, by virtue of subsection (1) above, are paid to the BBC under section 2(1) of the 1949 Act (fees and charges for licences); but refunds of sums so paid may be made by the BBC, out of sums received by them under section 2(1) of the 1949 Act, in such cases or classes of cases as they may determine.
- (3) Except so far as required for the making of refunds under subsection (2) above, sums received by the BBC under section 2(1) of the 1949 Act shall be paid into the Consolidated Fund.
- (4) Part I of the <sup>M5</sup>Wireless Telegraphy Act 1967 (obtaining of information as to sale and hire of television sets) shall have effect subject to the amendments specified in Part II of Schedule 18 to this Act (by virtue of which all of the functions of the Secretary of State under that Part of that Act, apart from his power to make regulations under section 2(7) or 6(1), are transferred to the BBC).

#### **Marginal Citations**

- M3** 1949 c. 54.  
**M4** 1969 c. 48.  
**M5** 1967 c. 72.

#### **181 Certain apparatus to be deemed to be apparatus for wireless telegraphy.**

- (1) Any apparatus which—
  - (a) is connected to the telecommunication system by means of which a relevant cable service is provided, and
  - (b) is so connected for the purpose of enabling any person to receive any programmes included in that service by means of the reception and immediate re-transmission of programmes included in a television broadcasting service,

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shall be deemed for the purposes of the 1949 Act to be apparatus for wireless telegraphy.

- (2) Any such apparatus shall, in addition, be deemed for the purposes of—
- (a) section 1(7) of the 1949 Act (as amended by Part I of Schedule 18 to this Act), and
  - (b) any regulations made by the Secretary of State for the purposes of that provision under section 2 of that Act,
- to be television receiving apparatus.
- (3) In this section “relevant cable service” means a service provided by any person to the extent that it consists in the use of a telecommunication system (whether run by him or by any other person) for the purpose of the delivery, otherwise than by wireless telegraphy, of programmes included in one or more television broadcasting services, where such programmes are so delivered—
- (a) for simultaneous reception at two or more places in the United Kingdom, or
  - (b) for reception at any place in the United Kingdom for the purpose of being presented there either to members of the public or to any group of persons.

- (4) In this section—
- “the 1949 Act” means the <sup>M6</sup>Wireless Telegraphy Act 1949;
  - “connected” has the same meaning as in the <sup>M7</sup>Telecommunications Act 1984;
  - “television broadcasting service” means a television broadcasting service within the meaning of Part I of this Act, whether provided by the holder of a licence under that Part or by the BBC or the Welsh Authority or in accordance with Part II of Schedule 11 to this Act.

**Marginal Citations**

- M6** 1949 c. 54.
- M7** 1984 c. 12.

*Listed events*

<sup>F2</sup>**182** .

**Textual Amendments**

- F2** S. 182 repealed (1.10.1996) by 1996 c. 55, ss. 105(2), 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

*Gaelic television programmes*

**183 Financing of programmes in Gaelic out of Gaelic Television Fund.**

- (1) The Secretary of State—

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- (a) may, for the financial year beginning with 1st April 1991, and  
(b) shall, for each subsequent financial year,  
pay to the Commission such amount as he may, with the approval of the Treasury, determine to be appropriate for the purposes of this section.
- (2) Any amount received by the Commission under subsection (1) shall be carried by them to the credit of a fund established by them under this section, to be known as the [<sup>F3</sup>Gaelic Broadcasting Fund] (and any such amount shall accordingly not be regarded as forming part of the revenues of the Commission).
- (3) The Fund shall be under the management of a body established for the purposes of this section, which shall be called [<sup>F4</sup>Comataidh Craolaidh Gaidhlig (the Gaelic Broadcasting Committee)] and shall consist of—
- (a) a chairman appointed by the Commission; and  
(b) such number of other members appointed by the Commission, not being less than four nor more than eight, as they may from time to time determine.
- [<sup>F5</sup>(3A) Before making any appointment under subsection (3) the Commission shall consult the Radio Authority.]
- (4) The Fund may be applied by the Committee—
- (a) in the making of grants for the following purposes, namely—
- (i) financing the making of television [<sup>F6</sup>and sound] programmes in Gaelic primarily with a view to the broadcasting of such programmes for reception in Scotland;  
(ii) financing the training of persons employed or to be employed in connection with the making of such programmes; and  
(iii) other purposes connected with or related to the making of such programmes; and
- (b) in financing the undertaking of research into the types of television [<sup>F6</sup>and sound] programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast.
- (5) When making any grant out of the Fund in pursuance of subsection (4) the Committee may impose such conditions as they think fit, including conditions requiring the grant to be repaid in specified circumstances.
- (6) The Committee shall perform their functions under this section with respect to the making of grants out of the Fund in such manner as they consider will [<sup>F7</sup>—
- (a)] secure that a wide range of high quality television programmes in Gaelic are broadcast for reception in Scotland;  
[<sup>F8</sup>(b)] widen the range and improve the quality of sound programmes in Gaelic that are broadcast for reception in Scotland;  
but] nothing in this section shall be construed as authorising programmes to be commissioned by the Committee.
- (7) The Commission shall so exercise their power under subsection (3) to appoint the members of the Committee as to secure that a majority of the members are persons who appear to them to represent the Gaelic-speaking community; and Schedule 19 to this Act shall have effect with respect to the Committee.
- (8) Any sums required by the Secretary of State under subsection (1) shall be paid out of money provided by Parliament.

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- (9) In this section, section 184 and Schedule 19—
- “the Commission” means the Independent Television Commission;
  - “the Committee” means the body established under subsection (3) above;
  - “Gaelic” means the Gaelic language as spoken in Scotland; and
  - “for reception in Scotland” means for reception wholly or mainly in Scotland.

#### Textual Amendments

- F3** Words in s. 183(2) substituted (1.4.1997) by 1996 c. 55, s. 95(2); S.I. 1997/1005, art. 4
- F4** Words in s. 183(3) substituted (1.4.1997) by 1996 c. 55, s. 95(3); S.I. 1997/1005, art. 4
- F5** S. 183(3A) inserted (1.4.1997) by 1996 c. 55, s. 95(4); S.I. 1997/1005, art. 4
- F6** Words in s. 183(4)(a)(i) and (b) inserted (1.4.1997) by 1996 c. 55, s. 95(5); S.I. 1997/1005, art. 4
- F7** Words in s. 183(6) renumbered (1.4.1997) as s. 183(6)(a) by 1996 c. 55, s. 95(6)(a); S.I. 1997/1005, art. 4
- F8** S. 183(6)(b) and word substituted for the word “but”(1.4.1997) by 1996 c. 55, s. 95(6)(b); S.I. 1997/1005, art. 4

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

- C1** S. 183: transfer of functions to the Scottish Ministers (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1; S.I. 1998/3178

### 184 Broadcasting of programmes in Gaelic on Channel 3 in Scotland.

- (1) Section 16 shall have effect in relation to any service to which this section applies as if the following requirements were included among those specified in subsection (2) of that section, namely—
- (a) that a suitable proportion of the programmes included in the service are programmes in Gaelic other than funded Gaelic productions;
  - (b) that the service includes funded Gaelic productions of which—
    - (i) a suitable proportion are of high quality, and
    - (ii) a suitable proportion are shown at peak viewing times; and
  - (c) that (taking the programmes included in the service in accordance with paragraphs (a) and (b) above as a whole) the service includes a wide range of programmes in Gaelic.
- (2) In subsection (1) above “funded Gaelic productions” means programmes in Gaelic the making of which has been wholly or partly financed out of grants made in pursuance of section 183(4) to the person providing the service.
- (3) The conditions which are, by virtue of section 33(1), to be included in a licence to provide a service to which this section applies accordingly include conditions imposed for the purpose of securing that the requirements specified in paragraphs (a) to (c) of subsection (1) above are complied with in relation to the service.
- (4) This section applies—
- (a) to any regional Channel 3 service that is to be provided for an area the whole of which is in Scotland; and

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- (b) if the Commission determine that it shall so apply, to any regional Channel 3 service that is to be provided for an area the greater part of which is in Scotland.
- (5) In this section “licence” and “regional Channel 3 service” have the same meaning as in Part I of this Act; and subsection (9) of section 183 applies for the purposes of this section.

*National television archive*

**185 Contributions towards maintenance of national television archive.**

- (1) The Commission shall, for the financial year which includes the commencement of this section and each subsequent financial year, determine an aggregate amount which they consider it would be appropriate for the holders of Channel 3 and Channel 5 licences to contribute, in accordance with this section, towards the expenses incurred by the nominated body in connection with the maintenance by it of a national television archive.
- (2) In this section “the nominated body” means such body as may for the time being be nominated by the Commission for the purposes of this section, being a body which—
  - (a) is for the time being a designated body for the purposes of section 75 of the <sup>M8</sup>Copyright, Designs and Patents Act 1988 (recordings for archival purposes), and
  - (b) appears to the Commission to be in a position to maintain a national television archive.
- (3) A Channel 3 or Channel 5 licence shall include conditions requiring the licence holder to pay to the Commission, in respect of each of the financial years mentioned in subsection (1), such amount as they may notify to him for the purposes of this section, being such proportion of the aggregate amount determined for that year under that subsection as they consider appropriate (and different proportions may be determined in relation to different persons).
- (4) Any amount received by the Commission by virtue of subsection (3) shall be transmitted by them to the nominated body.
- (5) In this section—
  - “the Commission” means the Independent Television Commission; and
  - “Channel 3 licence” and “Channel 5 licence” have the same meaning as in Part I of this Act.

**Marginal Citations**

**M8** 1988 c. 48.



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### *Duties of BBC as respects independent productions*

#### **186 Duty of BBC to include independent productions in their television services.**

- (1) It shall be the duty of the BBC to secure that, in each relevant period, not less than the prescribed percentage of the total amount of time allocated to the broadcasting of qualifying programmes in the television broadcasting services provided by them is allocated to the broadcasting of a range and diversity of independent productions.
- (2) In subsection (1)—
  - (a) “qualifying programmes” and “independent productions” have the same meaning as in section 16(2)(h), and “the prescribed percentage” means the percentage for the time being specified in section 16(2)(h); and
  - (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved;and before making an order under section 16(5) or (6) the Secretary of State shall (in addition to consulting the Independent Television Commission in accordance with section 16(7)) consult the BBC.
- (3) The Director General of Fair Trading (“the Director”) shall, in respect of each relevant period, make a report to the Secretary of State on the extent to which the BBC have, in his opinion, performed their duty under subsection (1) above in that period.
- (4) A report made by the Director under subsection (3) may contain, in addition to his conclusions as to the extent to which the BBC have performed that duty in the period in question—
  - (a) such an account of his reasons for those conclusions as is, in his opinion, expedient for facilitating a proper understanding of those conclusions; and
  - (b) his observations, in the light of those conclusions and his reasons for them, with regard to—
    - (i) competition in connection with the production of television programmes for broadcasting by the BBC, or
    - (ii) matters appearing to him to arise out of, or to be conducive to, such competition.
- (5) The Director may at any time make a report to the Secretary of State on any matter related to or connected with the performance by the BBC of their duty under subsection (1); and any such report may include observations by the Director on any matter falling within subsection (4)(b)(i) or (ii) and pertinent to the subject-matter of the report.
- (6) The Director shall publish any report made by him under this section in such manner as he considers appropriate; and where he makes any report under this section he shall have regard to the need for excluding from the report, so far as it is practicable to do so—
  - (a) any matter which relates to the private affairs of an individual, where in the opinion of the Director the publication of that matter would or might seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a body of persons (whether corporate or unincorporate), where in the opinion of the Director—
    - (i) publication of that matter would or might seriously and prejudicially affect the interests of that body, and

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- (ii) it is not necessary for the purposes of the report to include that matter as matter specifically relating to that body.
- (7) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of the Director under this section.
- (8) In any proceedings relating to the performance by the BBC of their duty under subsection (1), any report made by the Director under subsection (3)—
  - (a) shall be evidence of any facts stated in the report, and
  - (b) so far as it consists of any such conclusions as are mentioned in subsection (4), shall be evidence of the extent to which the BBC have performed that duty in the relevant period in question;
 and any document purporting to be a copy of any such report shall be received in evidence and shall be deemed to be such a copy unless the contrary is shown.
- (9) The following periods are relevant periods for the purposes of this section, namely—
  - (a) the period beginning with 1st January 1993 and ending with 31st March 1994;
  - (b) the financial year beginning with 1st April 1994; and
  - (c) each subsequent financial year.

#### **187 Information to be furnished by BBC for purposes of reports under section 186.**

- (1) The Director may serve on the BBC a notice requiring them, at a time and place specified in the notice—
  - (a) to produce to him such documents specified or described in the notice (being documents in the custody or under the control of the BBC), or
  - (b) to furnish him, in a form specified in the notice, with such estimates, returns or other information specified or described in it,
 as he may require for the purpose of making any report under section 186.
- (2) The BBC shall not by virtue of subsection (1) be compelled—
  - (a) to produce any document which they could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session, or
  - (b) in complying with any requirement for the furnishing of information, to give any information which they could not be compelled to give in evidence in such proceedings.
- (3) In this section “the Director” means the Director General of Fair Trading.

*Power to give directions relating to international obligations*

#### **188 Power to give broadcasting bodies etc. directions relating to international obligations.**

- (1) A body to which this section applies shall carry out any functions which the Secretary of State may by order direct them to carry out for the purpose of enabling Her Majesty’s Government in the United Kingdom to give effect to any international obligations of the United Kingdom.
- (2) This section applies to—
  - (a) the BBC;

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- (b) the Independent Television Commission;
  - (c) the Welsh Authority;
  - (d) the Radio Authority; and
  - (e) the [F9]Broadcasting Standards Commission]
- (3) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F9** Words in S. 188(2)(e) substituted (1.4.1997) by 1996 c. 55, s. 148(1), Sch. 10 Pt. II para. 20; S.I. 1997/1005, art. 4

#### *Matters relating to telecommunication systems*

### **189 Sharing of apparatus by operators of telecommunication systems.**

- (1) Where—
- (a) the telecommunications code contained in Schedule 2 to the 1984 Act expressly or impliedly imposes any limitation on the use to which any telecommunication apparatus installed by a person (“the operator”) may be put, and
  - (b) the operator is a party to a relevant agreement,
- that limitation shall not have effect so as to preclude the doing of anything which is done in relation to that apparatus in pursuance of that agreement; and anything which is so done shall be disregarded in determining, for the purposes of the telecommunications code as it applies in relation to the operator, the purposes for which that apparatus is used.
- (2) In this section “relevant agreement”, in relation to any telecommunication apparatus, means an agreement in writing—
- (a) to which the parties are either—
    - (i) two or more persons to whom this section applies, or
    - (ii) one or more persons to whom this section applies and one or more telecommunications operators who are not such persons; and
  - (b) which relates to the sharing by those persons of the use of that apparatus.
- (3) Subsection (1) shall not be construed, in relation to a person who is authorised by a relevant agreement to share the use of any apparatus installed by another party to the agreement, as affecting any requirement on him (whether imposed by any statutory provision or otherwise) to obtain any consent or permission in connection with the installation by him of any apparatus, or the doing by him of any other thing, in pursuance of the agreement.
- (4) This section applies to—
- (a) the holder of a licence to provide a local delivery service within the meaning of Part II of this Act;
  - (b) the holder of any licence to provide a prescribed diffusion service continued in force by, or granted under, Part II of Schedule 12 to this Act;

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- (c) a telecommunications operator in his capacity as a person providing the means of delivery for the service provided under his licence by a person falling within paragraph (a) or (b) above; and
  - (d) the company nominated for the purposes of section 127(1).
- (5) In this section—
- “the 1984 Act” means the <sup>M9</sup>Telecommunications Act 1984;
  - “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment;
  - “telecommunication apparatus” has the same meaning as in Schedule 2 to the 1984 Act;
  - “telecommunications operator” means a person who runs a telecommunication system the running of which is, or is not required to be, licensed under Part II of the 1984 Act.

#### Marginal Citations

M9 1984 c. 12.

### 190 Modification of certain references in Telecom- munications Act licences.

- (1) This section applies to licences which have been granted under section 7 of the Telecommunications Act 1984 (licensing of telecommunication systems) before the transfer date and continue in force on or after that date.
- (2) In any licence to which this section applies, any reference (however expressed) to a cable programme service sent under a licence granted under section 4 of the Cable Act shall be construed, as from the transfer date, as a reference to a licensable service within the meaning of Part I of that Act (other than an exempt service), whether sent—
  - (a) under a diffusion licence which is continued in force by, or granted under, Part II of Schedule 12 to this Act, or
  - (b) under a local delivery licence granted under this Act,
 or otherwise.
- (3) Where any licence to which this section applies (“the telecommunications licence”) authorises the Secretary of State to revoke that licence in the event of the revocation of a licence granted under section 4 of the Cable Act in respect of the licensed systems (“the cable licence”), he may similarly revoke the telecommunications licence in the event of the revocation of any licence granted in respect of the licensed systems, in succession to the cable licence, under or in pursuance of any of paragraphs 2 to 4 in Part II of Schedule 12 to this Act.
- (4) Where any licence to which this section applies (“the telecommunications licence”) provides for that licence to remain in force so long as there remains in force in respect of the licensed systems a licence granted under section 4 of the Cable Act (“the cable licence”), then if a local delivery licence is granted in respect of the licensed system, in succession to the cable licence, in pursuance of paragraph 6 in Part II of Schedule 12 to this Act, the telecommunications licence shall (subject to the terms contained in it) remain in force so long as that local delivery licence remains in force.
- (5) In this section—
  - “the Cable Act” means the <sup>M10</sup>Cable and Broadcasting Act 1984;

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“diffusion licence” means a licence to provide a prescribed diffusion service or other diffusion service within the meaning of Part I of the Cable Act;

“exempt service” means a service falling within any description of services exempted from licensing under Part I of the Cable Act by virtue of an order in force under section 3 of that Act immediately before the transfer date;

“the licensed systems”, in relation to a licence to which this section applies, means the telecommunication systems the running of which is authorised by the licence;

“local delivery licence” has the same meaning as in Part II of this Act;

“the transfer date” means the day appointed under section 127(1);

and any reference to a licence granted under section 4 of the Cable Act includes, in relation to a licence to which this section applies (“the relevant licence”), a reference to a licence granted under section 58 of the<sup>M10</sup> Telecommunications Act 1984 (whether described in the relevant licence in those terms or in any other way).

#### Marginal Citations

M10 1984 c. 46.

M11 1984 c. 12.

### 191 Revocation of class licence to run broadcast relay systems.

The licence entitled “Class Licence to run Broadcast Relay Systems”, which was granted by the Secretary of State on 25th November 1986 under section 7 of the Telecommunications Act 1984, is hereby revoked.

#### *Application of competition legislation*

### 192 Application of provisions of Fair Trading Act 1973 to broadcasting and telecommunication services.

- (1) In section 137(3) of the<sup>M12</sup> Fair Trading Act 1973 (definition of “supply of services”), there shall be inserted after paragraph (e) “and
  - (f) includes the making of arrangements, by means of such an agreement as is mentioned in section 189(2) of the Broadcasting Act 1990, for the sharing of the use of any telecommunication apparatus (within the meaning of Schedule 2 to the Telecommunications Act 1984).”
- (2) It is hereby declared for the avoidance of doubt that the provision of a broadcasting service is not a service falling within paragraph 7 of Schedule 5 to the Fair Trading Act 1973 (restriction on making references under section 14, 50 or 51 of the Act in connection with telecommunication services) by reason of the fact that the broadcasting service is provided by means of the running of any such system as is mentioned in that paragraph.
- (3) In subsection (2) “broadcasting service” means—
  - (a) a programme service; or
  - (b) a local delivery service (within the meaning of Part II of this Act).
- (4) In Part I of Schedule 7 to the<sup>M13</sup> Fair Trading Act 1973, paragraphs 8 and 9 (provision of programmes for transmission by Independent Broadcasting Authority, or of licensed

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cable programme services, wholly excluded from references under section 50 or 51 of the Act) shall cease to have effect.

#### Marginal Citations

M12 1973 c. 41.

M13 1973 c. 41.

### 193 Modification of networking arrangements in consequence of reports under competition legislation.

- (1) The Secretary of State may, in any of the circumstances in which this subsection has effect, by order provide for any networking arrangements specified in the order to have effect with such modifications as appear to him to be appropriate.
- (2) Subsection (1) shall have effect in the following circumstances, namely—
  - (a) where the circumstances are as mentioned in section 56(1) of the Fair Trading Act 1973 (order on report on monopoly reference) and the monopoly situation exists in connection with the provision of programmes for broadcasting in regional Channel 3 services;
  - (b) where the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and one or more of the enterprises which ceased to be distinct enterprises was engaged in the provision of such programmes; and
  - (c) where the circumstances are as mentioned in section 10(1) of the <sup>M14</sup>Competition Act 1980 (order on report on competition reference) and the anti-competitive practice was pursued in connection with the provision of such programmes.
- (3) An order under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section—
 

“networking arrangements” means any such arrangements as are mentioned in section 39(1) above;

“regional Channel 3 service” has the meaning given by section 14(6) above;

and any expression used in this section which is also used in the Fair Trading Act 1973 or the Competition Act 1980 has the same meaning as in that Act.

#### Marginal Citations

M14 1980 c. 21.

### 194 Restrictive Trade Practices Act 1976 not to apply to networking arrangements.

- (1) The <sup>M15</sup>Restrictive Trade Practices Act 1976 shall not apply, and shall be deemed never to have applied, to any relevant networking arrangements which are specified, or are of a description specified, in an order made by the Secretary of State (whether before or after the making of those arrangements) and which satisfy such conditions as may be so specified.

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- (2) In subsection (1) “relevant networking arrangements” means—
- (a) any arrangements entered into as mentioned in section 39(4) or (7)(b) above, or
  - (b) any agreement not falling within paragraph (a) but made for the purpose mentioned in section 39(1) above.
- (3) Before making an order under subsection (1) the Secretary of State shall consult the Independent Television Commission and the Director General of Fair Trading; and such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Marginal Citations**

M15 1976 c. 34.

**[<sup>F10</sup>194A] Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.**

- (1) In this section a “relevant agreement” means an agreement—
- (a) which is made between all holders of regional Channel 3 licences for securing the appointment by them, in accordance with conditions included in their licences by virtue of section 31A(a), of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
  - (b) which is made between them and the body corporate appointed to be the appointed news provider for the purposes of section 31(2) for purposes connected with the appointment.
- (2) If a relevant agreement is registered under the <sup>M16</sup>Restrictive Trade Practices Act 1976 (“the 1976 Act”), the Director General of Fair Trading shall report to the Secretary of State as to whether it appears to the Director that the agreement falls within subsection (4).
- (3) If, on receiving a report under subsection (2), it appears to the Secretary of State that the agreement falls within subsection (4), he may give a direction to the Director requiring him not to make an application to the Restrictive Practices Court under Part I of the 1976 Act in respect of the relevant agreement.
- (4) A relevant agreement falls within this subsection if—
- (a) those provisions of the agreement by virtue of which the 1976 Act applies to the agreement do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, or
  - (b) all or any of those provisions have, or are intended or likely to have, that effect to a significant extent, but that the effect is not greater than is necessary—
    - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
    - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).

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- (5) The Secretary of State may vary or revoke any direction given under subsection (3) above if he is satisfied that there has been a material change of circumstances such that—
- (a) the grounds for the direction have ceased to exist, or
  - (b) there are grounds for giving a different direction;
- and where the Secretary of State so varies or revokes any direction, he shall give notice of the variation or revocation to the Director.
- (6) In this section—
- (a) “agreement” and “Director” have the same meaning as in the 1976 Act, and
  - (b) “regional Channel 3 licence” has the same meaning as in Part I.]

#### Textual Amendments

**F10** Shoulder heading and s. 194A inserted (24.7.1996) by 1996 c. 55, s. 77(1)(2) (with s. 43(1)(6))

#### Marginal Citations

**M16** 1976 c. 34.

### General

#### 195 Offences by bodies corporate.

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### 196 Entry and search of premises.

- (1) If a justice of the peace is satisfied by information on oath—
- (a) that there is reasonable ground for suspecting that an offence under section 13, 82 or 97 has been or is being committed on any premises specified in the information, and
  - (b) that evidence of the commission of the offence is to be found on those premises,
- he may grant a search warrant conferring power on any person or persons authorised in that behalf by the relevant authority to enter and search the premises specified in the information at any time within one month from the date of the warrant.
- (2) In subsection (1) “the relevant authority”—
- (a) in relation to an offence under section 13 or 82, means the Independent Television Commission; and
  - (b) in relation to an offence under section 97, means the Radio Authority.



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- (3) A person who intentionally obstructs a person in the exercise of powers conferred on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (4) A person who discloses, otherwise than for the purposes of any legal proceedings or of a report of any such proceedings, any information obtained by means of an exercise of powers conferred by this section shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (5) In the application of this section to Scotland, for the reference to a justice of the peace there shall be substituted a reference to the sheriff and for any reference to information on oath there shall be substituted a reference to evidence on oath.
- (6) In the application of this section to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate and for any reference to information on oath there shall be substituted a reference to a complaint on oath.

## **197 Restriction on disclosure of information.**

- (1) Subject to subsections (2) to (4), no information with respect to any particular business which has been obtained under or by virtue of this Act shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.
- (2) Subsection (1) does not apply to any disclosure of information which is made—
  - (a) for the purpose of facilitating the performance of—
    - (i) any functions of the Independent Television Commission, the Welsh Authority or the Radio Authority under this Act or the 1988 Regulations, or
    - (ii) any functions of the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission under the <sup>M17</sup>Fair Trading Act 1973 (excluding Parts II, III and XI of that Act), the <sup>M18</sup>Restrictive Trade Practices Act 1976, the <sup>M19</sup>Competition Act 1980 or this Act or the 1988 Regulations;
  - (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings or a report of any such proceedings;
  - (c) for the purposes of any civil proceedings brought under or by virtue of the Fair Trading Act 1973 (excluding Part III), the Restrictive Trade Practices Act 1976 or this Act or the 1988 Regulations, or for the purposes of a report of any such proceedings; or
  - (d) in pursuance of any Community obligation.
- (3) Nothing in subsection (1) shall be construed—
  - (a) as limiting the matters which may be included in, or be made public as part of, a report under section 186 above or under Schedule 4 to this Act, or
  - (b) as applying to any information which has been made public as part of such a report.

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- (4) Subsection (1) does not apply to any information obtained as mentioned in section 196(4) above.
- (5) The following provisions, namely—
- (a) section 133(1) of the Fair Trading Act 1973,
  - (b) section 41(1) of the Restrictive Trade Practices Act 1976, and
  - (c) section 19(1) of the Competition Act 1980,
- shall not apply to any disclosure of information which is made for the purpose of facilitating the performance of any functions of the Independent Television Commission, the Welsh Authority or the Radio Authority under this Act or the 1988 Regulations.
- (6) Any person who discloses any information in contravention of subsection (1) shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (7) In this section “the 1988 Regulations” means the <sup>M20</sup>Control of Misleading Advertisements Regulations 1988.

#### Marginal Citations

**M17** 1973 c. 41.

**M18** 1976 c. 34.

**M19** 1980 c. 21.

**M20** S.I. 1988/915.

### 198 Financial provisions.

- (1) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

### 199 Notices.

- (1) Subsections (2) to (4) below have effect in relation to any notice required or authorised by or under this Act to be served on or given to any person other than the Secretary of State.
- (2) Any such notice shall be in writing and may be served on or given to the person in question—
  - (a) by delivering it to him,
  - (b) by leaving it at his proper address, or
  - (c) by sending it by post to him at that address.
- (3) Any such notice may—
  - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;

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- (b) in the case of a partnership, be served on or given to any partner or any person having the control or management of the partnership business;
  - (c) in the case of an unincorporated association other than a partnership, be served on or given to any member of the governing body of the association.
- (4) For the purposes of this section and section 7 of the <sup>M21</sup>Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom a notice is to be served or given shall be his last known address, except that—
- (a) where it is to be served on or given to a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body; and
  - (b) where it is to be served on or given to a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;
- and, in relation to a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom, the reference in paragraph (a) or (b) to its principal office includes a reference to its principal office within the United Kingdom (if any).
- (5) Any notice served—
- (a) by the Independent Television Commission under section 21, 41, 42 or 55, or
  - (b) by the Radio Authority under section 103, 109, 110, 111, or 120,
- shall be published in such manner as that body consider appropriate, and shall be so published as soon as reasonably practicable after it is served.
- (6) In this section (except in subsection (5)) “notice” includes any notification.

#### Marginal Citations

M21 1978 c. 30.

## 200 Regulations and orders.

- (1) Any power of the Secretary of State to make regulations or an order under this Act shall be exercisable by statutory instrument.
- (2) Any regulations or order made by the Secretary of State under this Act may make—
  - (a) different provision for different cases; and
  - (b) such supplemental, incidental, consequential or transitional provision or savings as the Secretary of State considers appropriate.

## 201 Programme services.

- (1) In this Act “programme service” means any of the following services (whether or not it is, or it requires to be, licensed under this Act), namely—
  - (a) any television broadcasting service or other television programme service (within the meaning of Part I of this Act);
  - (b) any sound broadcasting service or licensable sound programme service (within the meaning of Part III of this Act);
  - <sup>F11</sup>(bb) any digital sound programme service (within the meaning of Part II of the Broadcasting Act 1996)]

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- (c) any other service which consists in the sending, by means of a telecommunication system, of sounds or visual images or both either—
  - (i) for reception at two or more places in the United Kingdom (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or
  - (ii) for reception at a place in the United Kingdom for the purpose of being presented there to members of the public or to any group of persons.
- (2) Subsection (1)(c) does not apply to—
  - (a) a local delivery service (within the meaning of Part II of this Act);
  - (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the <sup>M22</sup>Telecommunications Act 1984; or
  - (c) a two-way service (as defined by section 46(2)(c)).

#### Textual Amendments

**F11** S. 201(1)(bb) inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 11** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

#### Marginal Citations

**M22** 1984 c. 12.

## 202 General interpretation.

- (1) In this Act (unless the context otherwise requires)—
- “advertising agent” shall be construed in accordance with subsection (7);
  - “the BBC” means the British Broadcasting Corporation;
  - [<sup>F12</sup>“a BBC company” means—
    - (a) any body corporate which is controlled by the BBC, or
    - (b) any body corporate in which the BBC or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]
  - “body”, without more, means a body of persons whether incorporated or not, and includes a partnership;
  - “broadcast” means broadcast by wireless telegraphy;
  - [<sup>F13</sup>“a Channel 4 company” means—
    - (a) any body corporate which is controlled by the Channel Four Television Corporation, or
    - (b) any body corporate in which the Corporation or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]
  - “connected”, in relation to any [<sup>F14</sup>person], shall be construed in accordance with paragraph 3 in Part I of Schedule 2;
  - “control”, in relation to a body, has the meaning given by paragraph 1(1) in that Part of that Schedule;
  - “dwelling-house” includes a hotel, inn, boarding-house or other similar establishment;

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[<sup>F15</sup>“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“EEA State” means a State which is a contracting party to the EEA Agreement;]

“financial year” shall be construed in accordance with subsection (2);

“frequency” includes frequency band;

“modifications” includes additions, alterations and omissions;

“pension scheme” means a scheme for the payment of pensions, allowances or gratuities;

“programme” includes an advertisement and, in relation to any service, includes any item included in that service;

[<sup>F16</sup>“an S4C company” means—

(a) any body corporate which is controlled by the Welsh Authority, or

(b) any body corporate in which the Welsh Authority or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);]

“telecommunication system” has the same meaning as in the <sup>M23</sup>Telecommunications Act 1984;

“the Welsh Authority” means the authority renamed Sianel Pedwar Cymru by section 56(1);

“wireless telegraphy” and “station for wireless telegraphy” have the same meaning as in the <sup>M24</sup>Wireless Telegraphy Act 1949.

(2) In any provision of—

(a) <sup>F17</sup> . . .

(b) Schedule 1, 2, 3, 6, 8, <sup>F18</sup> . . . or 19,

“financial year” means a financial year of the body with which that provision is concerned; and in any other provision of this Act “financial year” means the twelve months ending with 31st March.

(3) In this Act—

(a) references to pensions, allowances or gratuities include references to like benefits to be given on death or retirement; and

(b) any reference to the payment of pensions, allowances or gratuities to or in respect of any persons includes a reference to the making of payments towards provision for the payment of pensions, allowances or gratuities to or in respect of those persons.

(4) Any reference in this Act (however expressed) to a licence under this Act being in force is a reference to its being in force so as to authorise the provision under the licence of the licensed service; and any such reference shall accordingly not be construed as prejudicing the operation of any provisions of such a licence which are intended to have effect otherwise than at a time when the licensed service is authorised to be so provided.

(5) It is hereby declared that, for the purpose of determining for the purposes of any provision of this Act whether a service is—

(a) for general reception, or capable of being received, within the United Kingdom or elsewhere, or

(b) for reception at any place or places, or in any area, in the United Kingdom,

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the fact that the service has been encrypted to any extent shall be disregarded.

[<sup>F19</sup>(5A) For the purposes of this Act a person is not to be regarded at any time as being established both in the United Kingdom and in another EEA State.]

(6) Any reference in this Act, in relation to a service consisting of programmes transmitted by satellite—

- (a) to a person by whom the programmes are transmitted, or
- (b) to a place from which the programmes are transmitted,

is a reference to a person by whom, or a place from which, the programmes are transmitted to the satellite by means of which the service is provided.

(7) For the purposes of this Act—

- (a) a person shall not be regarded as carrying on business as an advertising agent, or as acting as such an agent, unless he carries on a business involving the selection and purchase of advertising time or space for persons wishing to advertise;
- (b) a person who carries on such a business shall be regarded as carrying on business as an advertising agent irrespective of whether in law he is the agent of those for whom he acts;
- (c) a person who is the proprietor of a newspaper shall not be regarded as carrying on business as an advertising agent by reason only that he makes arrangements on behalf of advertisers whereby advertisements appearing in the newspaper are also to appear in one or more other newspapers;
- (d) a company or other body corporate shall not be regarded as carrying on business as an advertising agent by reason only that its objects or powers include or authorise that activity.

#### Textual Amendments

- F12** Definition of “a BBC company” inserted (24.7.1996) in s. 202(1) by 1996 c. 55, s. 136, **Sch. 8**, para. 8 (with s. 43(1)(6))
- F13** Definition of “a Channel 4 company” inserted (1.10.1996) in s. 201(1) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(a)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F14** Words in definition of “connected” in s. 202(1) substituted (1.11.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(c)** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**
- F15** S. 202(1): definitions of “EEA Agreement” and “EEA State” inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 14(2)**
- F16** Definition of “an S4C company” inserted (1.10.1996) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. I para. 21(c)** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- F17** S. 202(2)(a) repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, art. 4
- F18** Words in s. 202(2)(b) repealed (1.4.1997) by 1996 c. 55, s. 148(2), **Sch. 11 Pt. I** (with s. 43(1)(6)); S.I. 1997/1005, art. 4
- F19** S. 202(5A) inserted (11.7.1997) by S.I. 1997/1682, reg. 2, **Sch. para. 14(3)**

#### Marginal Citations

- M23** 1984 c. 12.  
**M24** 1949 c. 54.

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### **203 Consequential and transitional provisions.**

- (1) The enactments mentioned in Schedule 20 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the provisions of this Act).
- (2) Unless the context otherwise requires, in any enactment amended by this Act—
  - “programme”, in relation to a programme service, includes any item included in that service; and
  - “television programme” includes a teletext transmission.
- (3) The enactments mentioned in Schedule 21 to this Act (which include certain spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The transitional provisions and savings contained in Schedule 22 to this Act shall have effect.

### **204 Short title, commencement and extent.**

- (1) This Act may be cited as the Broadcasting Act 1990.
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.
- (3) Subject to subsections (4) and (5), this Act extends to the whole of the United Kingdom.
- (4) In Part VII—
  - (a) section 162 and Schedule 15 extend to England and Wales only;
  - (b) section 163 extends to Scotland only;
  - (c) section 164 extends to England and Wales and Scotland; and
  - (d) section 165 extends to Northern Ireland only.
- (5) The amendments and repeals in Schedules 20 and 21 have the same extent as the enactments to which they refer.
- (6) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend to the Isle of Man or any of the Channel Islands with such modifications, if any, as appear to Her Majesty to be appropriate.

#### **Subordinate Legislation Made**

**P1** [S. 204\(2\)](#): power of appointment partly exercised by [S.I. 1990/2347](#)

**Status:**

Point in time view as at 11/07/1997.

**Changes to legislation:**

Broadcasting Act 1990, Part X is up to date with all changes known to be in force on or before 22 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.