



# Broadcasting Act 1990

## 1990 CHAPTER 42

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

#### INDEPENDENT TELEVISION SERVICES

#### CHAPTER 1

#### REGULATION BY COMMISSION OF TELEVISION SERVICES GENERALLY

#### *General provisions about licences*

### **5 Restrictions on the holding of licences.**

- (1) [<sup>F1</sup>OFCOM] shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - [<sup>F2</sup>(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) [<sup>F1</sup>OFCOM] may accordingly—
- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
    - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;

*Status: Point in time view as at 15/06/2011.*

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- (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
- (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
- (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
  - (i) shareholdings in the body, or
  - (ii) the directors of the body,
 where such proposals are known to the body;
- [<sup>F3</sup>(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
  - (i) shareholdings in the body; or
  - (ii) the directors of the body;
- (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
  - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.

[<sup>F4</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, [<sup>F1</sup>OFCOM] shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]

  - (3) Where [<sup>F1</sup>OFCOM] —
    - (a) revoke the award of any licence in pursuance of subsection (2)(b), or
    - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,
 any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
  - (4) Those provisions shall not so have effect if [<sup>F1</sup>OFCOM] decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
  - (5) Every licence shall include such conditions as [<sup>F1</sup>OFCOM] consider necessary or expedient to ensure that where—
    - (a) the holder of the licence is a body, and
    - (b) a relevant change takes place after the grant of the licence,
 [<sup>F1</sup>OFCOM] may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.

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- [<sup>F5</sup>(6) [<sup>F1</sup>OFCOM] shall not serve any such notice on the licence holder unless—
- (a) [<sup>F1</sup>OFCOM] have notified him of the matters [<sup>F6</sup>constituting their grounds for revoking the licence] and given him a reasonable opportunity of making representations to them about those matters, and
  - (b) in a case where the relevant change is one falling within subsection (6A)—
    - (i) they have also given him an opportunity of complying with [<sup>F7</sup>the requirements imposed by or under Schedule 14 to the Communications Act 2003,] within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.

(6A) A relevant change falls within this subsection if it consists only in one or more of the following—

- <sup>F8</sup>(a) .....
- (b) a change in the national market share (within the meaning of [<sup>F9</sup>Part 1 of Schedule 14 to the Communications Act 2003] ) of one or more national newspapers (within the meaning of that Part of that Schedule);
- (c) a change in the local market share <sup>F10</sup>... in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).]

[<sup>F11</sup>(6AA) For the purposes of this section, the local market share of a local newspaper in any area at any time is the percentage of the total number of copies of all local newspapers sold in that area in the relevant six months which is represented by the total number of copies of that newspaper sold in that area in that six months.

(6AB) In subsection (6AA) “the relevant six months” means the six months ending with the last whole calendar month to end before the time in question.

(6AC) For the purposes of subsection (6AA), the number of copies of a newspaper sold in a particular area during any period may be taken to be such number as is estimated by OFCOM—

- (a) in such manner, or
  - (b) by reference to such statistics prepared by any other person,
- as they think fit.

(6AD) In relation to a newspaper which is distributed free of charge (rather than sold), references in this section to the number of copies sold include references to the number of copies distributed.]

<sup>F12</sup>(6B) .....

[<sup>F13</sup>(6C) [<sup>F1</sup>OFCOM] shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change..

<sup>F13</sup>(6D) Where [<sup>F1</sup>OFCOM] receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.]

(7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—

- (a) any change affecting the nature or characteristics of the body, or
- (b) any change in the persons having control over or interests in the body, [<sup>F14</sup>or

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- (c) any other change giving rise to <sup>F15</sup>a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003]]  
 being <sup>F16</sup>(in any case)] a change which is such that, if it fell to <sup>F1</sup>OFCOM] to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

### Textual Amendments

- F1** Words in s. 5 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 3(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F2** S. 5(1)(b)(c) substituted for s. 5(1)(b) (29.12.2003) by Communications Act 2003 (c. 21), **ss. 350(2), 411(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F3** S. 5(2)(da)(db) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 3(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F4** S. 5(2A) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(2)**
- F5** S. 5(6)(6A)(6B) substituted for s. 5(6) (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 12(2)**; S.I. 1996/2120, art. 5, **Sch. 2**
- F6** Words in s. 5(6)(a) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 3(4)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F7** Words in s. 5(6)(b)(i) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 3(4)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F8** S. 5(6A)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 3(5) (a), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F9** Words in s. 5(6A)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 3(5)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F10** Words in s. 5(6A)(c) omitted (15.6.2011) by virtue of The Media Ownership (Radio and Cross-media) Order 2011 (S.I. 2011/1503), arts. 1, **11(2)**
- F11** S. 5(6AA)-(6AD) inserted (15.6.2011) by The Media Ownership (Radio and Cross-media) Order 2011 (S.I. 2011/1503), arts. 1, **11(3)**
- F12** S. 5(6B) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 3(6), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F13** S. 5(6C)(6D) inserted (24.7.1996) by 1996 c. 55, ss. 136, 149(1), **Sch. 8 para. 2(3)**
- F14** S. 5(7)(c) and the word “or” immediately preceding it inserted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 12(3)(a)**; S.I. 1996/2120, art. 5, **Sch. 2**
- F15** Words in s. 5(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 3(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F16** Words in s. 5(7) substituted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 12(3)(b)**; S.I. 1996/2120, art. 5, **Sch. 2**

### Modifications etc. (not altering text)

- C1** Pt. I: transfer of functions (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 1 para. 3(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C2** S. 5 modified (temp.) (17.7.2003) by The Communications Act 2003 (Commencement No. 1) Order 2003 (S.I. 2003/1900), **art. 5**
- C3** S. 5(1) modified (1.11.1996) by 1996 c. 55, s. 143(1)(2); S.I. 1996/2120, art. 5, **Sch. 2**
- C4** S. 5(1)(a) amended (1.11.1996) by 1996 c. 55, s. 145(7); S.I. 1996/2120, art. 5, **Sch. 2**

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