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# Broadcasting Act 1996

## 1996 CHAPTER 55

An Act to make new provision about the broadcasting in digital form of television and sound programme services and the broadcasting in that form on television or radio frequencies of other services; to amend the Broadcasting Act 1990; to make provision about rights to televise sporting or other events of national interest; to amend in other respects the law relating to the provision of television and sound programme services; to provide for the establishment and functions of a Broadcasting Standards Commission and for the dissolution of the Broadcasting Complaints Commission and the Broadcasting Standards Council; to make provision for the transfer to other persons of property, rights and liabilities of the British Broadcasting Corporation relating to their transmission network; and for connected purposes. [24th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Extent Information

- E1** Act extends mainly to the United Kingdom but for extent to Northern Ireland and application to the Isle of Man and the Channel Islands see s. 150.

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## PART I

### DIGITAL TERRESTRIAL TELEVISION BROADCASTING

#### *Introductory*

#### **1 Multiplex services and digital programme services.**

- (1) In this Part “multiplex service” means a service provided by any person which consists in the broadcasting for general reception of two or more services specified in subsection (3) by combining the relevant information in digital form, together with any broadcasting in digital form of digital additional services (as defined by section 24(1)).
- [<sup>F1</sup>(1A) In subsection (1) “for general reception” means for general reception in, or in any area in, the United Kingdom.]
- (2) A service in respect of which a licence under section 7 is in force is not prevented from being a multiplex service at a particular time merely because only one service specified in subsection (3) is being broadcast in digital form at that time.
- (3) The services referred to in subsections (1) and (2) are—
- (a) a digital programme service (as defined by subsection (4)), or
  - (b) a qualifying service (as defined by section 2(2)).
- (4) In this Part “digital programme service” means a service consisting in the provision by any person of television programmes (together with any ancillary services, as defined by section 24(2)) with a view to their being broadcast in digital form for general reception, whether by him or by some other person, but does not include—
- (a) a qualifying service,
  - (b) a teletext service, or
  - (c) any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures, except, in the case of a service falling within paragraph (b) or (c), to the extent that it is an ancillary service.
- [<sup>F2</sup>(4A) In subsection (4) “for general reception” means for general reception in, or in any area in, the United Kingdom or any other EEA State.]
- (5) The Secretary of State may, if having regard to developments in broadcasting technology he considers it appropriate to do so, by order amend the definition of “digital programme service” in subsection (4).
- (6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section—
- “broadcast” means broadcast otherwise than—
- (a) by satellite, or
  - (b) in the provision of a local delivery service (as defined by section 72(1) of the 1990 Act), <sup>F3</sup> . . .
- <sup>F3</sup> . . .

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### Textual Amendments

- F1** S. 1(1A) inserted (30.12.1998) by S.I. 1998/3196, reg. 2, Sch. para. 8(2)  
**F2** S. 1(4A) inserted (30.12.1998) by S.I. 1998/3196, reg. 2, Sch., para. 8(3)  
**F3** S. 1(7): definition of “for general reception” and the word “and” immediately preceding it repealed (30.12.1998) by S.I. 1998/3196, reg. 2, Sch. para. 8(4)

## 2 Meaning of “independent analogue broadcaster” and “qualifying service”.

- (1) In this Part “independent analogue broadcaster” means—
- the Channel Four Television Corporation,
  - the Welsh Authority,
  - any person who holds a Channel 3 licence or a Channel 5 licence, or
  - the public teletext provider.
- (2) Subject to subsections (4) and (5), in this Part “qualifying service” means any service which—
- is provided by an independent analogue broadcaster falling within paragraph (a) or (c) of subsection (1) who has notified the Commission, within the period of one month beginning with the commencement of this section, of his intention to provide a service specified in subsection (3) (“the corresponding analogue service”) for broadcasting in digital form, and
  - as respects the programmes included in the service and the times at which they are broadcast, is identical with the corresponding analogue service.
- (3) The services referred to in subsection (2) are—
- Channel 4, and
  - any Channel 3 service or Channel 5.
- (4) If the Welsh Authority notify the Commission, within the period of one month beginning with the commencement of this section, of their intention to provide S4C Digital, S4C Digital shall be a qualifying service for the purposes of this Part.
- (5) If—
- the public teletext provider notifies the Commission, within the period of one month beginning with the commencement of this section, of his intention to provide a teletext service for broadcasting in digital form, and
  - the Commission consent under section 30 to his provision of that service,
- that service (in this Part referred to as “the qualifying teletext service”) shall be a qualifying service for the purposes of this Part.
- (6) In this Part “public teletext provider” means the person who holds the additional services licence (within the meaning of Part I of the 1990 Act) which relates to the teletext service referred to in section 49(2) of that Act.
- (7) In subsection (2) “programme” does not include an advertisement.

### Commencement Information

- II** S. 2 wholly in force at 1.10.1996; s. 2 not in force at Royal Assent see s. 149; s. 2 in force for certain purposes at 15.9.1996 and wholly in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1

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### *General provisions about licences*

## **3 Licences under Part I.**

- (1) Any licence granted by the Independent Television Commission (in this Part referred to as “the Commission”) under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of this Part.
- (2) A licence may be so granted for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified.
- (3) The Commission—
  - (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it, and
  - (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;

and nothing in this Part shall be construed as affecting the operation of this subsection or of section 5(1) or (2)(b) or (c).
- (4) The Commission may vary a licence by a notice served on the licence holder if—
  - (a) in the case of a variation of the period for which a licence having effect for a specified period is to continue in force, the licence holder consents, or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Commission about the variation.
- (5) Paragraph (a) of subsection (4) does not affect the operation of section 17(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 13(1).
- (6) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Commission.
- (7) Without prejudice to the generality of subsection (6), the Commission shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.
- (8) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the <sup>M1</sup>Wireless Telegraphy Act 1949 or section 7 of the <sup>M2</sup>Telecommunications Act 1984 in connection with the provision of that service.

#### **Marginal Citations**

**M1** 1949 c. 54.

**M2** 1984 c. 12.

## **4 General licence conditions.**

- (1) A licence may include—

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- (a) such conditions as appear to the Commission to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under the 1990 Act or this Act;
  - (b) conditions requiring the payment by the licence holder to the Commission (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
  - (c) conditions requiring the licence holder to provide the Commission, in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under the 1990 Act or this Act;
  - (d) conditions providing for such incidental and supplemental matters as appear to the Commission to be appropriate.
- (2) A licence may in particular include conditions requiring the licence holder—
- (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified, or
  - (b) (except to the extent that the Commission consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified.
- (3) The fees required to be paid to the Commission by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by the Commission; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to the 1990 Act.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Commission shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide the Commission with any information, and
  - (b) in purported compliance with that condition provides them with information which is false in a material particular,
- he shall be taken for the purposes of sections 17, 23 and 27 of this Act and section 42 of the 1990 Act to have failed to comply with that condition.
- (6) Nothing in this Part which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

## **5 Restrictions on holding of licences under Part I.**

- (1) The Commission 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 the 1990 Act (as amended by this Act); and

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- (b) that any requirements imposed by or under Parts III to V of that Schedule (as so amended) are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Commission may accordingly—
- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
    - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
  - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
  - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
  - (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
    - (i) shareholdings in the body, or
    - (ii) the directors of the body,
 where such proposals are known to the body;
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- (3) Where the Commission—
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
  - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,
- any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
- (4) Those provisions shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as the Commission 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,
- the Commission may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.
- (6) The Commission shall not serve any such notice on the licence holder unless—
- (a) they have notified him of the matters complained of and given him a reasonable opportunity of making representations to them about those matters, and

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- (b) in a case where the relevant change is one falling within subsection (7)—
  - (i) they have also given him an opportunity of complying with Parts III and IV of Schedule 2 to the 1990 Act within a period specified in the notification, and
  - (ii) the period specified in the notification has elapsed.
- (7) A relevant change falls within this subsection if it consists only in one or more of the following—
  - (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2 to the 1990 Act,
  - (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule), or
  - (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (8) 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,
  - (b) any change in the persons having control over or interests in the body, or
  - (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2 to the 1990 Act,being (in any case) a change which is such that, if it fell to the Commission 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.

### *Multiplex services*

## **6 Assignment of frequencies by Secretary of State.**

- (1) The Secretary of State may by notice assign to the Commission, for the purpose of the provision of multiplex services falling to be licensed by them under this Part, such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more of those services.
- (2) Any frequency assigned by the Secretary of State under subsection (1) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (3) The Secretary of State may by notice revoke the assignment under subsection (1) of any frequency specified in the notice, whether or not the frequency is for the time being one on which there is being provided a multiplex service licensed under this Part.

## **7 Multiplex licences.**

- (1) Where the Commission propose to grant a licence to provide a multiplex service (in this Part referred to as a “multiplex licence”) they shall publish, in such manner as they consider appropriate, a notice—

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- (a) stating that they propose to grant such a licence,
  - (b) specifying the frequency or frequencies on which the service is to be provided,
  - (c) specifying, in such manner as the Commission consider appropriate, the area or areas in the United Kingdom within which the frequency or frequencies is or are to be available,
  - (d) inviting applications for the licence and specifying the closing date for such applications,
  - (e) specifying the fee payable on any application, and
  - (f) stating whether any percentage of multiplex revenue for each accounting period would be payable by an applicant in pursuance of section 13 if he were granted the licence and, if so, specifying that percentage.
- (2) Unless an order under section 13(2) is in force—
- (a) the consent of the Secretary of State shall be required for so much of the notice as relates to the matters specified in subsection (1)(f), and
  - (b) the Commission may if they think fit (with that consent) specify under subsection (1)(f)—
    - (i) different percentages in relation to different accounting periods falling within the period for which the licence would be in force, and
    - (ii) a nil percentage in relation to any accounting period so falling.
- (3) When publishing a notice under subsection (1), the Commission—
- (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii) and (f), and
  - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) An 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 subsection (1)(e),
  - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
    - (i) the parts of the area specified under subsection (1)(c) which would be within the coverage area of the service,
    - (ii) the timetable in accordance with which that coverage would be achieved, and
    - (iii) the technical means by which it would be achieved,
  - (c) the applicant's proposals as to the number of digital programme services to be broadcast, as to the characteristics of each of those services and as to the areas in which they would be provided,
  - (d) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of those services would begin,
  - (e) the applicant's proposals as to the broadcasting of digital additional services,
  - (f) the applicant's proposals for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving all the multiplex services available in that area,
  - (g) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and



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- (h) such other information as the Commission may reasonably require for the purpose of considering the application.
- (5) In subsection (4)(f) “acquisition” includes acquisition on hire or loan.
- (6) At any time after receiving such an application and before determining it, the Commission may require the applicant to furnish additional information under any of paragraphs (b) to (h) of subsection (4).
- (7) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (8) The Commission shall, as soon as reasonably practicable after the date specified in a notice under subsection (1) as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,
    - (ii) the proposals submitted by him under subsection (4)(c), and
    - (iii) such other information connected with his application as the Commission consider appropriate; and
  - (b) a notice—
    - (i) inviting representations to be made to them with respect to any of the applications, and
    - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

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

**C1** S. 7(1)(f) restricted (*temp.* from 20.11.1996 to 29.9.2002) in relation to any notice published by the Commission by [S.I. 1996/2759](#), [arts. 2, 3](#)

## **8 Award of multiplex licences.**

- (1) Where the Commission have published a notice under section 7(1), they shall in determining whether, or to whom, to award the multiplex licence in question, have regard to the extent to which, taking into account the matters specified in subsection (2) and any representations made to them in pursuance of section 7(8)(b) with respect to those matters, the award of the licence to each applicant would be calculated to promote the development of digital television broadcasting in the United Kingdom otherwise than by satellite.
- (2) The matters referred to in subsection (1) are—
  - (a) the extent of the coverage area proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 7(4)(b),
  - (b) the timetables proposed by the applicant under section 7(4)(b)(ii) and (d),
  - (c) the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
  - (d) the capacity of the digital programme services proposed to be included in the service to appeal to a variety of tastes and interests,

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- (e) any proposals by the applicant for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving all the multiplex services available in that area, and
- (f) whether, in contracting or offering to contract with persons providing digital programme services or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.

- (3) In subsection (2)(e) “acquisition” includes acquisition on hire or loan.
- (4) Where the Commission have awarded a multiplex licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
  - (a) publish in such manner as they consider appropriate—
    - (i) the name of the person to whom the licence has been awarded, and
    - (ii) such other information as the Commission consider appropriate, and
  - (b) grant the licence to that person.

## **9 Power to require two or more multiplex licences to be granted to one person.**

- (1) The Commission may, before publishing a notice under section 7(1), determine that two or more multiplex licences are on that occasion to be granted to one person.
- (2) Where the Commission have so determined, they shall publish a single notice under section 7(1) in relation to the licences.
- (3) In relation to any application made in pursuance of such a notice—
  - (a) references in section 7(4) to the proposed service shall have effect as references to each of the proposed services,
  - (b) the reference in section 8(1) to the multiplex licence shall have effect as a reference to all the licences concerned,
  - (c) in section 8(2), the reference in paragraph (d) to the proposed service shall have effect as a reference to all the proposed services considered together, and other references to the proposed service shall have effect as references either to each of the proposed services or to all of them considered together, as the Commission consider appropriate.
- (4) Nothing in this section applies in relation to the renewal of a multiplex licence.

## **10 Award of multiplex licence subject to conditions.**

- (1) The Commission may, when awarding a multiplex licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
  - (a) any duties which are or may be imposed on them, or on the licence holder, by or under the 1990 Act or this Act, and
  - (b) any information provided to them under section 7(4)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where the Commission determine that any condition imposed by them in relation to a multiplex licence in pursuance of subsection (1) has not been satisfied, section 8

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shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.

- (3) Section 8 shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.

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

- (1) Subject to subsection (2), subsection (3) applies where at any time after a multiplex licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Commission that he does not intend to provide the service in question, or
  - (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force.
- (2) Subsection (3) shall not apply in the case of any person by virtue of paragraph (b) of subsection (1) unless the Commission 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 this subsection applies—
- (a) the Commission shall serve on the person to whom the licence has been granted a notice revoking the licence as from the time the notice is served on him, and
  - (b) section 8 shall (subject to subsection (4)) have effect as if he had not made an application for the licence.
- (4) Section 8 shall not have effect as mentioned in subsection (3) if the Commission decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.
- (5) Where the Commission revoke a multiplex 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 specified financial penalty not exceeding whichever is the greater of—
- (a) £50,000, or
  - (b) the prescribed amount.
- (6) In subsection (5) “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 Commission estimate would have been the multiplex revenue for that accounting period (as determined in accordance with section 14), and
  - (b) in any other case, 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder so falling (as so determined).

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- (7) Any financial penalty payable by any body by virtue of subsection (5) shall, in addition to being recoverable from that body as provided by section 38(4), be recoverable by the Commission as a debt due to them from any person who controls that body.

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

C2 S. 11 applied (with modifications)(20.11.1996) by S.I. 1996/2760, art. 5(1)(2)(4)

**12 Conditions attached to multiplex licence.**

- (1) A multiplex licence shall include such conditions as appear to the Commission to be appropriate for securing—
- (a) that the licensed service is established by the licence holder in accordance with the timetable and other proposals indicated in the technical plan submitted under section 7(4)(b),
  - (b) the implementation of any proposals submitted by the licence holder under section 7(4)(c), (d), (e) or (f),
  - (c) that all digital programme services broadcast under the licence are provided by the holder of a licence under section 18 [<sup>F4</sup>or by an EEA broadcaster],
  - (d) that all digital additional services broadcast under the licence are provided by the holder of a licence under section 25 [<sup>F5</sup>or by an EEA broadcaster],
  - (e) that in the terms on which the licence holder contracts, or offers to contract, for the broadcasting of digital programme services or digital additional services, he does not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons,
  - (f) that the licence holder does not, in any agreement with a person providing a digital programme service or digital additional services which entitles that person to use a specified amount of digital capacity on the frequency or frequencies to which the licence relates, restrict that person's freedom to make arrangements with some other person as to the use of any of that digital capacity (except to the extent that the restriction is reasonably required for the purpose of ensuring the technical quality of the broadcasts or for the purpose of securing compliance with any other condition of the licence),
  - (g) that the signals carrying the multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area for which the service is provided as is for the time being reasonably practicable, and
  - (h) that, while the licence is in force, at least 90 per cent. of digital capacity on the frequency or frequencies to which the licence relates is available for the broadcasting of digital programme services, qualifying services, programme-related services or relevant technical services.
- (2) Any conditions imposed in pursuance of subsection (1)(a) or (b) may be varied by the Commission with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).
- (3) Where the licence holder applies to the Commission for the variation of any condition imposed in pursuance of subsection (1)(b) and relating to the characteristics of any of the digital programme services to be broadcast under the licence, the Commission shall vary the condition accordingly unless it appears to them that, if the application were

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granted, the capacity of the digital programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.

[<sup>F6</sup>(3A) In subsection (1)(c) and (d) “EEA broadcaster” means a person who for the purposes of Council Directive [89/552/EEC](#) is under the jurisdiction of an EEA State other than the United Kingdom.]

(4) In subsection (1)(h)—

- (a) “qualifying service” does not include the qualifying teletext service,
- (b) “programme-related service” means any digital additional service consisting in the provision of services (apart from advertising) which—
  - (i) are ancillary to the programmes included in one or more television programme services (within the meaning of Part I of the 1990 Act) and are directly related to the contents of those programmes, or
  - (ii) relate to the promotion or listing of such programmes, and
- (c) “relevant technical service” means any technical service which relates to one or more digital programme services.

(5) The Secretary of State may by order amend subsection (1)(h) by substituting for the percentage for the time being specified there a different percentage specified in the order.

(6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(7) Section 10 of the 1990 Act (Government control over licensed services) shall apply in relation to a multiplex service licensed under this Part as it applies in relation to a service licensed under Part I of that Act.

#### Textual Amendments

- F4** Words in s. 12(1)(c) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(2\)](#)
- F5** Words in s. 12(1)(d) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(3\)](#)
- F6** S. 12(3A) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(4\)](#)

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

- C3** S. 12 applied (with modifications)(20.11.1996) by [S.I. 1996/2760, art. 5\(1\)\(3\)\(4\)](#)

### 13 Additional payments to be made in respect of multiplex licences.

- (1) Where a multiplex licence is granted in pursuance of a notice under subsection (1) of section 7 which specified a percentage of multiplex revenue under paragraph (f) of that subsection, the licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b)) in respect of each accounting period of his falling within the period for which the licence is in force, an amount representing such percentage of the multiplex revenue for that accounting period (determined under section 14) as was specified in the notice.
- (2) The Secretary of State may by order provide that, in relation to any notice under subsection (1) of section 7 published while the order is in force, no percentage shall be specified under paragraph (f) of that subsection.

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- (3) Any order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A multiplex licence may include conditions—
- (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1), and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may in particular include conditions—
- (a) authorising the Commission 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.
- (6) Where—
- (a) the first complete accounting period of the licence holder falling within the period for which the licence is in force (“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) 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.

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

- C4** S. 13(1) applied (with modifications)(20.11.1996) by **S.I. 1996/2760, art. 5(1)(4)(5)**
- C5** S. 13(2)(3) excluded (20.11.1996) by **S.I. 1996/2760, art. 5(6)**
- C6** S. 13(4)-(6) applied (*prosp.*) by **1990 c. 42, s. 26(9A)** (as inserted by **1996 c. 55, s. 82(3)** (with s. 43(1)(6))

**14 Multiplex revenue.**

- (1) For the purposes of section 13(1) the multiplex revenue for each accounting period of the holder of a multiplex licence shall consist of—
- (a) all payments received or to be received by him or any person connected with him from a person other than a programme provider or an additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital programme service or digital additional service broadcast by means of the multiplex service to which the licence relates, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service or digital additional service,

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- (b) all payments received or to be received by him or any person connected with him in respect of the broadcasting of any qualifying service by means of the multiplex service,
  - (c) all payments received or to be received by any programme provider or any person connected with him from a person other than the holder of the multiplex licence, an additional services provider or another programme provider—
    - (i) in consideration of the inclusion in that period, in any digital programme service provided by him for broadcasting by means of the multiplex service, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service, and
  - (d) all payments received or to be received by any additional services provider or any person connected with him from a person other than the holder of the multiplex licence, a programme provider or another additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital additional service provided by him for broadcasting by means of the multiplex service, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital additional service.
- (2) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (1)(a)(i), any payments are made to the holder of the multiplex licence or any connected person to meet any payments payable by the licence holder by virtue of section 13(1), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (3) In the case of an advertisement included as mentioned in subsection (1)(a)(i), (c)(i) or (d)(i) under arrangements made between—
  - (a) the holder of the multiplex licence, a programme provider or an additional services provider or any person connected with any of them, and
  - (b) a person acting as an advertising agent,the amount of any receipt by the licence holder, programme provider or additional services provider 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 (4), be the amount of the payment by the advertiser after the deduction of the commission.
- (4) If the amount deducted by way of commission as mentioned in subsection (3) 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.
- (5) If, in any accounting period of the holder of the multiplex licence, a programme provider or an additional services provider or a person connected with any of them derives, in relation to any programme to be included in the relevant service, any financial benefit (whether direct or indirect) from payments made by any person other than the licence holder, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the relevant payments shall be taken to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (6) In subsection (5)—

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- (a) “the relevant service” means—
    - (i) in relation to a programme provider or a person connected with him, any digital programme service provided as mentioned in subsection (1)(c)(i), and
    - (ii) in relation to an additional services provider or a person connected with him, any digital additional service provided as mentioned in subsection (1)(d)(i), and
  - (b) “relevant payments” means—
    - (i) in relation to a programme provider, the payments referred to in subsection (1)(c), and
    - (ii) in relation to an additional services provider, the payments referred to in subsection (1)(d).
- (7) Where, in any accounting period of the holder of the multiplex licence—
- (a) the licence holder provides a digital programme service or digital additional service for broadcasting by means of the multiplex service,
  - (b) the licence holder is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(a) being made to the licence holder,
  - (c) a programme provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(c) being made to the programme provider, or
  - (d) an additional services provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(d) being made to the additional services provider,
- the Commission may, if they consider that the amount which would (apart from this subsection) be the multiplex revenue for that accounting period is less than it would have been if the digital programme service or digital additional service had been provided, or the activity engaged in, by another person at arm’s length, treat the multiplex revenue as increased by the amount of the difference.
- (8) Where, in any accounting period of the holder of the multiplex licence, the licence holder or a programme provider or additional services provider receives payments falling within subsection (1)(a), (b), (c) or (d) from a person connected with him and it appears to the Commission that the amount which (apart from this subsection) would be the multiplex revenue for that accounting period is less than it would have been if the arrangements between him and the connected person were such as might be expected between parties at arm’s length, the Commission may treat the multiplex revenue as increased by the amount of the difference.
- (9) In this section—
- “additional services provider”, in relation to a multiplex licence, means any person who provides any digital additional service for broadcasting by means of the multiplex service to which the licence relates;
  - “programme provider”, in relation to a multiplex licence, means any person who provides a digital programme service for broadcasting by means of the multiplex service to which the licence relates.



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## **15 Attribution of multiplex revenue to licence holder and others.**

- (1) For the purposes of section 17(3), the share of multiplex revenue attributable to the holder of a multiplex licence in respect of any accounting period of his shall be—
  - (a) the aggregate of—
    - (i) payments falling within paragraphs (a) or (b) of section 14(1), and
    - (ii) payments received or to be received by him from programme providers and additional services providers in respect of the provision of multiplex services in that period,less
  - (b) the amount of any payments made or to be made to programme providers or additional service providers which would fall within paragraph (c) or (d) of section 14(1) but for the fact that they are received from the holder of the multiplex licence.
- (2) For the purposes of section 23(3) or section 27(3), the share of multiplex revenue attributable to a programme provider or additional services provider in relation to a multiplex service in respect of any accounting period of the holder of the multiplex licence shall be—
  - (a) the aggregate of—
    - (i) payments falling within paragraph (c) or (d) of section 14(1), and
    - (ii) payments received or to be received from the holder of the multiplex licence which would fall within one of those paragraphs but for the fact that they are received from the holder of the multiplex licence,less
  - (b) the amount of any payments made or to be made to the holder of the multiplex licence in respect of the provision of multiplex services in that period.
- (3) In a case falling within subsection (7) or (8) of section 14, the Commission may treat the share of multiplex revenue attributable to any person for the accounting period of the holder of the multiplex licence as increased by such amount as they consider appropriate to take account of the circumstances mentioned in that subsection.
- (4) In this section “additional services provider” and “programme provider”, in relation to a multiplex licence, have the same meaning as in section 14.

## **16 Duration and renewal of multiplex licences.**

- (1) A multiplex licence shall (subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 17(6)) continue in force for a period of twelve years.
- (2) A multiplex licence granted within six years of the commencement of this section may be renewed on one occasion in accordance with this section for a period of twelve years beginning with the date on which it would otherwise expire.
- (3) An application for the renewal of a multiplex licence under subsection (2) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (4) At any time before determining the application, the Commission may—
  - (a) require the applicant to furnish—
    - (i) a technical plan which supplements that submitted by the licence holder under section 7(4)(b), and

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- (ii) proposals which supplement any proposals submitted by the licence holder under section 7(4)(f), and
  - (b) notify the applicant of requirements which must be met by that supplementary technical plan or those supplementary proposals and relate to the matters referred to in section 7(4)(b)(i) and (ii) and (f).
- (5) The consent of the Secretary of State shall be required for any exercise by the Commission of their powers under subsection (4) and for any decision by the Commission not to exercise those powers; and in deciding whether to give his consent the Secretary of State shall have regard to any report made to him under subsection (1) (b) of section 33 and to any representations received by him on consultation under subsection (4) of that section.
- (6) Where any such application is made before the relevant date, the Commission may postpone consideration of it by them for as long as they think appropriate having regard to subsection (10).
- (7) Where an application for the renewal of a multiplex licence has been duly made to the Commission they may refuse the application only if—
- (a) it appears to them that the applicant has failed to comply with any of the conditions included in his licence,
  - (b) any supplementary technical plan or supplementary proposals submitted under subsection (4)(a) fail to meet requirements notified to the applicant under subsection (4)(b), or
  - (c) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied with the conditions to be included in the licence as renewed.
- (8) Subject to subsection (9), on the grant of any such application the Commission may with the consent of the Secretary of State, and shall if so required by him—
- (a) specify a percentage different from that specified under section 7(1)(f) as the percentage of multiplex revenue for each accounting period of his that will be payable by the applicant in pursuance of section 13(1) during the period for which the licence is to be renewed, or
  - (b) specify such a percentage where none was specified under section 7(1)(f);
- and the Commission may specify under paragraph (a) or (b) either of the things mentioned in section 7(2)(b).
- (9) Where an order under section 13(2) is in force on the relevant date, no percentage of multiplex revenue shall be payable as mentioned in subsection (8)(a) during the period for which the licence is to be renewed.
- (10) Where the Commission have granted a person's application under this section, they shall formally renew his licence from the date on which it would otherwise expire; and they shall not so renew his licence unless they have notified him of any percentage specified by them under subsection (8) 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.
- (11) Where a multiplex licence has been renewed under this section, the licence as renewed shall include such further conditions as appear to the Commission to be appropriate for securing the implementation of any supplementary technical plan and supplementary proposals submitted under subsection (4)(a).

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- (12) In this section “the relevant date”, in relation to a multiplex licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 7(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 service formerly provided under that licence.
- (13) Nothing in this section prevents the holder of a multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 7(1).

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

C7 S. 16 applied (with modifications)(20.11.1996) by S.I. 1996/2760, art. 5(1)(4)(7)

**17 Enforcement of multiplex licences.**

- (1) If the Commission are satisfied that the holder of a multiplex licence has failed to comply with any condition of the licence or with any direction given by the Commission 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 Commission, or
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed whichever is the greater of—
- (a) £50,000, or
  - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
- (a) in a case where a penalty under this section has not previously been imposed on the holder of the multiplex licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the share of multiplex revenue attributable to him for his last complete accounting period (as determined in accordance with section 15), and
  - (b) in any other case, 5 per cent. of the share of multiplex revenue attributable to him for that accounting period (as so determined),
- and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the share of multiplex revenue attributable to him for that accounting period (as so determined).
- (4) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (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 Commission 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

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to the operation of the licensed service has been such as to justify the revocation of that notice.

- (6) Section 42 of the 1990 Act (power to revoke Channel 3 or 5 licence) shall have effect in relation to a multiplex licence as it has effect in relation to a Channel 3 licence, but as if the reference in subsection (1)(a) of that section to Part I of the 1990 Act were a reference to this Part.

### *Digital programme services*

## **18 Licensing of digital programme services.**

- (1) An application for a licence to provide digital programme services (in this Part referred to as a “digital programme licence”) shall—
- (a) be made in such manner as the Commission may determine, and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, the Commission may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital programme licence is made to the Commission in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).
- (5) Subject to subsection (6), sections 6 to 12 of the 1990 Act (general provisions relating to services licensed under Part I of that Act) shall apply in relation to a digital programme service licensed under this Part as they apply in relation to a service licensed under that Part of that Act.
- (6) In its application in relation to a digital programme service—
- (a) section 6 of the 1990 Act shall have effect with the omission of subsection (8), and
  - (b) section 12(1)(b) of that Act shall have effect as if the reference to the Commission’s functions under Chapter II of Part I of that Act included a reference to their functions under this Part.

## **19 Duration and conditions of digital programme licence.**

- (1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 23(8), a digital programme licence shall continue in force until it is surrendered by its holder.
- (2) A digital programme licence shall include such conditions as the Commission consider necessary or appropriate to secure in relation to each service provided under the licence—
- (a) that a proper proportion of the matter included in the programmes provided by the service is of European origin, and
  - (b) that in each year not less than 10 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the service

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is allocated to the broadcasting of a range and diversity of independent productions.

- (3) A digital programme licence shall also include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence—
  - (a) on entering into any agreement with the holder of a multiplex licence for the provision of a digital programme service to be broadcast by means of a multiplex service, to notify the Commission—
    - (i) of the identity of the multiplex service,
    - (ii) of the characteristics of the digital programme service to which the agreement relates,
    - (iii) of the period during which it will be provided, and
    - (iv) where under the agreement the holder of the digital programme licence will be entitled to the use of a specified amount of digital capacity, of that amount,
  - (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii), (iii) or (iv), to notify the Commission of the variation so far as relating to those matters, and
  - (c) where he is providing a digital programme service to the holder of a multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Commission of that fact.
- (4) A digital programme licence shall also include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in subsection (3)(a), to submit to the Commission 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 service, together with his proposals for encouraging the training or retraining of persons employed or to be employed by persons providing programmes for inclusion in that service.
- (5) Where the holder of a digital programme licence has submitted proposals to the Commission in accordance with a condition included in the licence by virtue of subsection (4) or has failed to comply with such a condition, the Commission may, after consulting him, vary the licence so as to include in the licence such further conditions as they consider appropriate in relation to the matters referred to in that subsection.
- (6) In framing any condition in pursuance of subsection (2)(a), the Commission shall have regard to such of the international obligations of United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (7) In subsection (2)(b)—
  - (a) “independent productions” and “qualifying programmes” have the same meaning as in section 16(2)(h) of the 1990 Act, 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.
- (8) The Secretary of State may by order amend subsection (2)(b) by substituting a different percentage for the percentage for the time being specified there.

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- (9) Before making an order under subsection (8) the Secretary of State shall consult the Commission; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section “programme” does not include an advertisement.

## **20 Code relating to provision for deaf and visually impaired.**

- (1) The Commission shall draw up, and from time to time review, a code giving guidance as to—
- (a) the extent to which digital programme services and qualifying services should promote the understanding and enjoyment by—
    - (i) persons who are deaf or hard of hearing, and
    - (ii) persons who are blind or partially-sighted,
 of the programmes to be included in such services, and
  - (b) the means by which such understanding and enjoyment should be promoted.
- (2) In this section “assistance” means assistance of any of the following three kinds, namely—
- (a) subtitling for the deaf,
  - (b) audio-description for the blind, and
  - (c) presentation in, or translation into, sign language.
- (3) The code must require that, as from the tenth anniversary of the date of the commencement of the provision of any digital programme service, in each week—
- (a) at least <sup>F7</sup>80 per cent. of so much of the service as consists of programmes which are not excluded programmes in relation to subtitling for the deaf is to be accompanied by such subtitling, and
  - (b) at least 10 per cent. of so much of the service as consists of programmes which are not excluded programmes in relation to audio-description for the blind is to be accompanied by such audio-description.
- (4) The code must specify—
- (a) in relation to subtitling for the deaf, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirement in paragraph (a) of subsection (3) to apply, and
  - (b) in relation to audio-description for the blind, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirement in paragraph (b) of that subsection to apply.
- (5) If an order under section 21(1)(b) is in force, the code must also specify, in relation to presentation in, or translation into, sign language, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirements specified in the order to apply.
- (6) In determining under subsection (4) or (5) whether it is appropriate for a particular requirement to apply to any class of programmes, the Commission shall have regard, in particular, to the benefit which the assistance would be likely to confer on the persons for whom it is intended and to the technical difficulty of providing it.

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- (7) In this section “excluded programme”, in relation to assistance of a particular kind, means a programme falling within a class specified under subsection (4) or (5) in relation to assistance of that kind.
- (8) Without prejudice to the generality of subsection (1), the code may—
- (a) require persons providing digital programme services, at any time or times before the anniversary referred to in subsection (3), to meet specified targets in relation to subtitling for the deaf or audio-description for the blind,
  - (b) require a specified percentage of so much of any digital programme service as consists of programmes which are not excluded programmes in relation to presentation in, or translation into, sign language, to be so presented or translated, and
  - (c) require, in relation to assistance of any kind, a specified percentage of so much of any digital programme service as consists of excluded programmes falling within a specified class to be accompanied by assistance of that kind.
- (9) In subsection (8) “specified” means specified in, or determined by the Commission under, the code.
- (10) Subsections (3) and (8), so far as relating to audio-description for the blind or presentation in, or translation into, sign language, shall have effect as if any reference to a digital programme service included a reference to a qualifying service.
- (11) The Commission may determine that, for the purposes of any provision included in the code in pursuance of subsection (3), a digital programme service provided by any person is to be treated as a continuation of a digital programme service previously provided by him.
- (12) Before drawing up the code or reviewing it in pursuance of this section the Commission shall consult such bodies or persons appearing to them to represent the interests of the persons referred to in subsection (1)(a) as the Commission think fit.
- (13) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate; and in determining the manner of publication, the Commission shall have regard to the need to make the code or revision accessible to persons who are blind or partially sighted and persons who are deaf or hard of hearing.
- (14) In this section—
- “programme” does not include an advertisement;
  - “qualifying service” does not include the qualifying teletext service.

#### Textual Amendments

F7 Words in s. 20(3)(a) substituted (4.7.2001) by S.I. 2001/2378, art. 2

## 21 Powers of Secretary of State in relation to code under section 20.

- (1) The Secretary of State may by order—
- (a) amend subsection (3) of section 20 by substituting for any percentage specified there a percentage specified in the order, and

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- (b) require the Commission to include in the code maintained under that section the requirement that in each week, at least a percentage specified in the order of so much of any digital programme service or qualifying service as consists of programmes which are not excluded programmes for the purposes of that section in relation to presentation in, or translation into, sign language is to be so presented or translated.
- (2) In subsection (1) “qualifying service” does not include the qualifying teletext service.
- (3) Before making an order under subsection (1), the Secretary of State shall consult the Commission.
- (4) No order under subsection (1) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

## **22 Compliance with code under section 20.**

- (1) The Commission shall do all that they can to secure that the provisions of the code maintained by them under section 20 are observed in the provision of digital programme services and qualifying services.
- (2) Without prejudice to the generality of subsection (1), a digital programme licence shall include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in section 19(3)(a), to submit to the Commission proposals for ensuring that the code is complied with in relation to the provision of the digital programme service.
- (3) Where the holder of a digital programme licence has submitted proposals to the Commission in accordance with a condition included in the licence by virtue of subsection (2) or has failed to comply with such a condition, the Commission shall, after consulting him, vary the licence so as to include in the licence such further conditions as they consider appropriate for the purpose of securing compliance with the code in the provision of the digital programme service in question.

## **23 Enforcement of digital programme licences.**

- (1) If the Commission are satisfied that the holder of a digital programme licence has failed to comply with any condition of the licence or with any direction given by the Commission 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 Commission, or
  - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed whichever is the greater of—
  - (a) £50,000, or
  - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
  - (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital programme licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares



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- of multiplex revenue attributable to him in relation to multiplex services in respect of relevant accounting periods (as determined in accordance with section 15), and
- (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) In subsection (3)(a) “relevant accounting period”, in relation to a multiplex service, means the last accounting period of the holder of the multiplex licence.
- (5) Where, in the case of any multiplex service, the first accounting period of the holder of the multiplex licence throughout which the holder of the digital programme licence provides a digital programme service for broadcasting by means of the multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) the share of multiplex revenue attributable to the holder of the digital programme licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which the Commission estimate to be the share of multiplex revenue attributable to him for the first period.
- (6) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) 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 Commission 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.
- (8) Subject to subsection (9), section 40(1) to (4) (power to direct licensee to broadcast correction or apology or not to repeat programme) and section 42 (power to revoke Channel 3 or 5 licence) of the 1990 Act shall apply in relation to a digital programme licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital programme licence, section 42 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
- (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by the Commission of their powers under subsection (1) in respect of any failure to comply with any condition of a digital programme licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

*Digital additional services provided on television broadcasting frequencies*

## **24 Digital additional services.**

- (1) In this Part “digital additional service” means any service which—
- [<sup>F8</sup>(a) is provided by any person with a view to its being broadcast in digital form (whether by him or by some other person)—
- (i) by means of a multiplex service; or

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- (ii) for general reception in, or in any area in, an EEA State other than the United Kingdom, but]
  - (b) is not a digital programme service, a qualifying service, an ancillary service or a technical service.
- (2) In this Part “ancillary service” means any service which is provided by the holder of a digital programme licence or by an independent analogue broadcaster and consists in the provision of—
- (a) subtitling for the deaf in connection with programmes included in a digital programme service or qualifying service provided by him, or
  - (b) other services (apart from advertising) which—
    - (i) are ancillary to such programmes and directly related to their contents, or
    - (ii) relate to the promotion or listing of such programmes.
- (3) In this Part “technical service” means a service which—
- (a) is provided for technical purposes connected with the encryption or decryption of one or more digital programme services or digital additional services, and
  - (b) is of a description specified in an order made by the Secretary of State.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F8** S. 24(1)(a) substituted (30.12.1998) by S.I. 1998/3196, reg. 2, Sch. para. 10

## 25 Licensing of digital additional services.

- (1) An application for a licence to provide digital additional services (in this Part referred to as a “digital additional services licence”) shall—
- (a) be made in such manner as the Commission may determine, and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, the Commission may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital additional services licence is made to the Commission in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).
- (5) Subject to subsection (6), sections 6 to 12 of the 1990 Act (general provisions relating to services licensed under Part I of that Act) shall apply in relation to any digital additional service which is licensed under this Part of this Act and is broadcast for general reception in, or in any area in, the United Kingdom [<sup>F9</sup>or any other EEA State]as they apply in relation to services licensed under Part I of the 1990 Act.
- (6) In its application in relation to a digital additional service—

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- (a) section 6 of the 1990 Act shall have effect with the omission of subsection (8), and
- (b) section 12(1)(b) of the 1990 Act shall have effect as if the reference to the Commission's functions under Chapter II of Part I of that Act included a reference to their functions under this Part.

#### Textual Amendments

**F9** Words in s. 25(5) inserted (30.12.1998) by S.I. 1998/3196, reg. 2, Sch. para. 11

### 26 Duration and conditions of digital additional services licence.

- (1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 27(8), a digital additional services licence shall continue in force until it is surrendered by its holder.
- (2) A digital additional services licence shall include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence—
  - (a) on entering into any agreement with the holder of a multiplex licence for the broadcasting of digital additional services by means of a multiplex service, to notify the Commission—
    - (i) of the identity of the multiplex service,
    - (ii) of the period during which the services will be provided,
    - (iii) where under the agreement the holder of the digital additional services licence will be entitled to the use of a specified amount of digital capacity, of that amount,
  - (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify the Commission of the variation so far as relating to those matters, and
  - (c) where he is providing digital additional services to the holder of a multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Commission of that fact.

### 27 Enforcement of digital additional services licences.

- (1) If the Commission are satisfied that the holder of a digital additional services licence has failed to comply with any condition of the licence or with any direction given by the Commission 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 Commission, or
  - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed whichever is the greater of—
  - (a) £50,000, or
  - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—

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- (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital additional services licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to multiplex services in respect of relevant accounting periods (as determined in accordance with section 15), and
  - (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) In subsection (3)(a) “relevant accounting period”, in relation to a multiplex service, means the last accounting period of the holder of the multiplex licence.
- (5) Where, in the case of any multiplex service, the first accounting period of the holder of the multiplex licence throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting by means of the multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) the share of multiplex revenue attributable to the holder of the digital additional services licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which the Commission estimate to be the share of multiplex revenue attributable to him for the first period.
- (6) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) 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 Commission 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.
- (8) Subject to subsection (9), sections 40(1) to (4) and section 42 of the 1990 Act shall apply in relation to a digital additional services licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital additional services licence, section 42 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by the Commission of their powers under subsection (1) in respect of any failure to comply with any condition of a digital additional services licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

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*Digital broadcasting of services provided by independent analogue broadcasters*

**28 Provision for broadcasting of services provided by independent analogue broadcasters.**

- (1) The Secretary of State shall exercise his powers under this section for the purposes of—
  - (a) facilitating the broadcasting of qualifying services by means of multiplex services licensed under this Part, and
  - (b) entitling any independent analogue broadcaster who in accordance with this section provides a qualifying service for broadcasting in digital form on a frequency to the use of digital capacity on that frequency.
- (2) The Secretary of State shall, in assigning frequencies to the Commission under section 6, by direction to the Commission—
  - (a) designate one or two frequencies as frequencies to which this section applies, and
  - (b) specify in relation to each frequency so designated—
    - (i) the independent analogue broadcasters for whom digital capacity is to be reserved in accordance with this section,
    - (ii) the amount of digital capacity to be so reserved for each of them,
    - (iii) the times of day between which or days of the week on which such capacity is to be so reserved,
    - (iv) the area in the United Kingdom in which each of them is to be permitted to provide services, and
    - (v) the qualifying services which, subject to the provisions of this section, are intended to be broadcast on that frequency.
- (3) The Secretary of State may by order—
  - (a) provide, in relation to any frequency to which this section applies—
    - (i) that any or all of the provisions of sections 7 to 16 and sections 18 and 19 are not to apply, or are to apply with specified modifications, and
    - (ii) that provisions of the order are to have effect in place of any or all of those provisions,
  - (b) provide for the Commission to include in any multiplex licence granted in respect of any such frequency such conditions as may be specified in, or determined by them under, the order, including conditions for securing the result specified in subsection (4),
  - (c) provide for the Commission to vary any licence under which the service specified in section 2(3) corresponding to the qualifying service (“the corresponding analogue service”) is provided so as to include such conditions relating to the broadcasting of the qualifying service as may be specified in, or determined by the Commission under, the order and to include those conditions in any other licence under which the corresponding analogue service is subsequently provided, and
  - (d) make such other provision for either of the purposes specified in subsection (1) as he considers appropriate.
- (4) The result referred to in subsection (3)(b) is that, in consideration of the making, by any independent analogue broadcaster specified under subsection (2)(b)(i) in relation to the frequency concerned, of such payments as are from time to time agreed between

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him and the holder of the multiplex licence or (in default of agreement) determined by the Commission under the order, the holder of that licence will use the digital capacity specified under subsection (2)(b)(ii) for the broadcasting of services provided by that broadcaster.

- (5) Where under subsection (2)(b) digital capacity is reserved only between particular times, on particular days or in a particular area, the reference in subsection (4) to broadcasting is a reference to broadcasting between those times, on those days or in that area.
- (6) Without prejudice to the generality of section 200(2)(a) of the 1990 Act (which provides that orders may make different provision for different cases), an order under this section may make different provision for different frequencies.
- (7) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 29 The S4C digital service.

- (1) If the Welsh Authority provide S4C Digital, it shall be their duty—
  - (a) to provide it as a public service for disseminating information, education and entertainment,
  - (b) to ensure that all the programmes in Welsh which are broadcast on S4C are broadcast on S4C Digital at the same time, and
  - (c) to ensure that the programmes which are broadcast on S4C Digital but not on S4C maintain—
    - (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
    - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.
- (2) Sections 57(4), 58(5), 59, 60 and 64 of the 1990 Act shall apply in relation to S4C Digital as they apply in relation to S4C.
- (3) No payment shall be required by the BBC in respect of the broadcasting pursuant to subsection (1)(b) of programmes provided by them under section 58(1) of the 1990 Act.
- (4) In this section “programme” does not include an advertisement.

## 30 The qualifying teletext service.

- (1) If the public teletext provider has notified the Commission under section 2(5) of his intention to provide a teletext service for broadcasting in digital form as a qualifying service, he shall submit to the Commission his proposals for providing that service in compliance with the requirements specified in subsection (3).
- (2) The Commission shall give their consent to the provision of the service unless it appears to them that the proposed service would not comply with the requirements specified in subsection (3).
- (3) The requirements referred to in subsections (1) and (2) are—

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- (a) that the service includes a sufficient amount of news items which are of high quality and deal with both national and international matters,
  - (b) that the service includes a sufficient amount of information which is of particular interest to persons living within different areas for which the service is provided, and
  - (c) that (taken as whole) the service includes a sufficient amount of information (other than news) which is calculated to appeal to a wide variety of tastes and interests.
- (4) Where the Commission have given their consent under subsection (2), they shall vary the relevant licence held by the public teletext provider so as to include such conditions as appear to them to be appropriate—
- (a) for imposing on the public teletext provider, in specified circumstances, an obligation to provide the qualifying teletext service, and
  - (b) for securing that the qualifying teletext service, if provided, accords with the proposals submitted under subsection (1);
- and they may include those conditions in any other licence under which the analogue service is subsequently provided.
- (5) Sections 6 to 12 of the 1990 Act (general provisions relating to services licensed under Part I of that Act) shall apply in relation to the qualifying teletext service as they apply in relation to the analogue service, but as if the reference in section 12(1)(b) of the 1990 Act to the Commission’s functions under Chapter II of Part I of that Act included a reference to their functions under this Part.
- (6) In this section—
- “the analogue service” means the service referred to in section 49(2) of the 1990 Act;
  - “the relevant licence” means the additional services licence (within the meaning of Part I of the 1990 Act) under which the analogue service is provided.

### **31 Advertisements included in qualifying services.**

Where an independent analogue broadcaster other than the Welsh Authority or the public teletext provider includes in a qualifying service advertisements which are not included in the corresponding analogue service (within the meaning of section 2(2)), sections 8 and 9 of the 1990 Act shall have effect as if the provision of the advertisements constituted the provision of a service licensed under Part I of the 1990 Act.

#### *Miscellaneous and supplemental*

### **32 Digital broadcasting of Gaelic programmes.**

- (1) The Secretary of State may by order provide for the Commission to include in any multiplex licence granted in respect of one frequency to which section 28 applies such conditions relating to the broadcasting of programmes in Gaelic for reception wholly or mainly in Scotland as may be specified in, or determined by them under, the order.
- (2) The Secretary of State may by order require the holder of a multiplex licence (“the holder”), in complying with any such conditions, to broadcast programmes in

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Gaelic supplied by each of the persons mentioned in subsection (4) (“the suppliers”) amounting to such minimum number of hours (if any) of transmission time per year as may be specified in the order in relation to that supplier.

- (3) For the purpose of enabling the holder to comply with any such conditions and any obligation imposed by virtue of subsection (2), it shall be the duty of each supplier to provide the holder, free of charge, with such programmes in Gaelic which have been broadcast by the supplier as the holder may request.
- (4) The suppliers are—
  - (a) the BBC,
  - (b) the Channel Four Television Corporation,
  - (c) any holder of a Channel 3 licence to provide a regional Channel 3 service (within the meaning of Part I of the 1990 Act) for reception wholly in Scotland, and
  - (d) such other persons providing television broadcasting services as may be specified by order by the Secretary of State.
- (5) Subsection (3) shall not apply in relation to any programme first broadcast by the supplier concerned—
  - (a) before 1st January 1993, or
  - (b) in the period beginning on 1st January 1993 and ending on 31st March 1997, if the supplier has no right to broadcast it again or has such a right but is not entitled to transfer it to the holder.
- (6) The holder may broadcast any programme supplied by virtue of subsection (3) on one occasion only.
- (7) The holder shall consult Comataidh Craolaidh Gaidhlig and the suppliers about—
  - (a) the quantity of programmes likely to be requested by the holder from each supplier by virtue of subsection (3), and
  - (b) the schedules proposed for the broadcast by the holder of programmes supplied by virtue of that subsection,
 and shall have regard to any comments made as a result of such consultation.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section “Gaelic” means the Gaelic language as spoken in Scotland.

### **33 Review of digital television broadcasting.**

- (1) For the purpose of considering for how long it would be appropriate for television broadcasting services to continue to be provided in analogue form, the Secretary of State—
  - (a) shall keep under review the extent of—
    - (i) the provision in the United Kingdom of multiplex services,
    - (ii) the availability in the United Kingdom in digital form of the services specified in section 2(3), S4C Digital, the qualifying teletext service, and the television broadcasting services of the BBC, and
    - (iii) the ownership or possession in the United Kingdom of equipment capable of receiving the services referred to in sub-paragraph (ii) when broadcast or transmitted in digital form,



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- and the likely future extent of such provision, such availability and such ownership or possession, and
- (b) shall, on or before the fourth anniversary of the day on which the first multiplex licence is granted under section 8, and at such time or times thereafter as he thinks fit, require the Commission and the BBC to report to him on the matters referred to in paragraph (a).
- (2) If the Commission or the BBC are required to submit a report under subsection (1)(b), they shall submit the report within twelve months of the date of the requirement.
- (3) Before making any report under subsection (1)(b), the Commission shall consult—
- (a) the holders of all multiplex licences,
  - (b) the holders of digital programme licences who are providing digital programme services which are being broadcast,
  - (c) such other persons providing services licensed by the Commission under this Part or Part I or II of the 1990 Act as the Commission think fit, and
  - (d) the Welsh Authority;
- and the Commission shall include in their report a summary of representations made to them by the persons consulted.
- (4) For the purpose mentioned in subsection (1), the Secretary of State shall, on requiring reports under subsection (1)(b), consult—
- (a) such persons appearing to him to represent viewers as he thinks fit, and
  - (b) such other persons as he thinks fit,
- in connection with the matters referred to in subsection (1)(a) and also, if the Secretary of State thinks fit, as to the likely effects on viewers of any television broadcasting service ceasing to be broadcast in analogue form.
- (5) In this section “television broadcasting service” has the same meaning as in Part I of the 1990 Act.

#### **34 Promotion of equal opportunities and fair treatment.**

- (1) Any multiplex licence or digital programme 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,
  - (b) to make arrangements for promoting, in relation to employment by him, the fair treatment of disabled persons, and
  - (c) to review those arrangements from time to time.
- (2) In subsection (1) “racial group” has the same meaning as in the <sup>M3</sup>Race Relations Act 1976 [<sup>F10</sup> or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997], and “disabled person” has the same meaning as in the <sup>M4</sup>Disability Discrimination Act 1995.

#### **Textual Amendments**

**F10** Words in s. 34(2) inserted (4.8.1997) by S.I. 1997/869, art. 73, Sch. 2 para. 9; S.R. 1997/273, art. 2(4)

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#### Marginal Citations

M3 1976 c. 74.

M4 1995 c. 50.

### 35 Enforcement of licences held by BBC companies.

Where the Commission—

- (a) give a direction to a BBC company under section 40(1) of the 1990 Act as applied by section 23(8) or 27(8),
- (b) serve a notice on a BBC company under any provision of section 17, 23 or 27, or
- (c) receive any representations from a BBC company under section 17(4), 23(6) or 27(6) or under section 42 of the 1990 Act as so applied,

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

### 36 Power to vary amount of financial penalties.

- (1) The Secretary of State may by order amend any of the provisions specified in subsection (2) by substituting a different sum for the sum for the time being specified there.
- (2) The provisions referred to in subsection (1) are—
  - section 11(5)(a);
  - section 17(2)(a);
  - section 23(2)(a); and
  - section 27(2)(a).
- (3) An order under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 37 Computation of multiplex revenue.

Part I of Schedule 1 (which contains provisions relating to the computation of multiplex revenue for the purposes of this Part) shall have effect.

### 38 Certain receipts of Commission to be paid into Consolidated Fund.

- (1) Where, in respect of any licence granted under this Part, the Commission receive any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Commission but shall—
  - (a) if the licence is for the provision of a service for any area in Great Britain, be paid into the Consolidated Fund of the United Kingdom,
  - (b) if the licence is for the provision of a service for any area in Northern Ireland, be paid into the Consolidated Fund of Northern Ireland, or
  - (c) in any other case, be paid into whichever of those Funds the Commission consider appropriate or into both of those Funds in such proportions as the Commission consider appropriate.

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- (2) The amounts referred to in subsection (1) are amounts payable to the Commission by virtue of any of the following provisions—
- section 11(5);
  - section 13(1);
  - section 17(1);
  - section 23(1);
  - section 27(1).
- (3) Subsection (1) shall not be construed as applying to any amount which is required by the Commission for the making of an adjustment in respect of an overpayment made by any person.
- (4) Any amount payable by any person to the Commission under or by virtue of this Part shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of a licence granted under this Part, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (5) The Commission shall, in respect of each financial year, prepare an account showing—
- (a) all such amounts falling within subsection (1) as have been received by them, and
  - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,
- and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

### **39 Interpretation of Part I.**

- (1) In this Part—
- “ancillary service” has the meaning given by section 24(2);
  - “a Channel 3 licence” has the same meaning as in Part I of the 1990 Act and “a Channel 3 service” means a regional or national Channel 3 service (within the meaning of that Part);
  - “Channel 4”, “Channel 5” and “a Channel 5 licence” have the same meaning as in Part I of the 1990 Act;
  - “the Commission” means the Independent Television Commission;
  - “digital additional service” has the meaning given by section 24(1), and “digital additional services licence” means a licence to provide such services;
  - “digital programme service” has the meaning given by section 1(4), and “digital programme licence” means a licence to provide such services;
  - “independent analogue broadcaster” has the meaning given by section 2(1);
  - “licence” means a licence under this Part, and “licensed” shall be construed accordingly;
  - “multiplex service” has the meaning given by section 1(1), and “multiplex licence” means a licence to provide such a service;
  - “public teletext provider” has the meaning given by section 2(6);
  - “qualifying service” has the meaning given by section 2(2);

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“qualifying teletext service” means the public teletext service provided by the public teletext provider for broadcasting in digital form as a qualifying service;

“S4C” and “on S4C” have the same meaning as in Part I of the 1990 Act;

“S4C Digital” means the service referred to in section 57(1A)(a) of the 1990 Act, and “on S4C Digital” means in that service;

“technical service” has the meaning given by section 24(3).

- (2) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

## PART II

### DIGITAL TERRESTRIAL SOUND BROADCASTING

#### *Introductory*

#### **40 Radio multiplex services.**

- (1) In this Part “radio multiplex service” means a service provided by any person which consists in the broadcasting for general reception of two or more services specified in subsection (3) by combining the relevant information in digital form, together with any broadcasting in digital form of digital additional services (as defined by section 63(1)).
- (2) A service in respect of which a licence under section 46 or 50 is in force is not prevented from being a radio multiplex service at a particular time merely because only one service specified in subsection (3) is being broadcast in digital form at that time.
- (3) The services referred to in subsections (1) and (2) are—
- (a) a digital sound programme service (as defined by subsection (5)), or
  - (b) a simulcast radio service (as defined by section 41(2)).
- (4) A radio multiplex service provided on a frequency or frequencies assigned to the Authority under section 45(1) may be either—
- (a) provided for a particular area or locality in the United Kingdom (a “local radio multiplex service”), or
  - (b) provided without any restriction by virtue of this Act to a particular area or locality in the United Kingdom (a “national radio multiplex service”).
- (5) In this Part “digital sound programme service” means a service consisting in the provision by any person of programmes consisting wholly of sound (together with any ancillary services, as defined by section 63(2)) with a view to their being broadcast in digital form for general reception, whether by him or by some other person, but does not include—
- (a) a simulcast radio service (as defined by section 41(2)), or

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- (b) a service where the sounds are to be received through the use of coded reference to pre-defined phonetic elements of sounds.
- (6) The Secretary of State may, if having regard to developments in broadcasting technology he considers it appropriate to do so, by order amend the definition of “digital sound programme service” in subsection (5).
- (7) No order under subsection (6) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section—
  - “broadcast” means broadcast otherwise than—
    - (a) by satellite, or
    - (b) in the provision of a local delivery service (as defined by section 72(1) of the 1990 Act), and
  - “for general reception” means for general reception in, or in any area in, the United Kingdom.

#### **41 Meaning of “independent national broadcaster” and “simulcast radio service”.**

- (1) In this Part “independent national broadcaster” means any person who is the holder of a national licence (within the meaning of Part III of the 1990 Act).
- (2) In this Part a “simulcast radio service” means any service provided for broadcasting in digital form—
  - (a) which is provided by an independent national broadcaster who has notified the Authority, within the period of one month beginning with the commencement of this section, of his intention to provide a service for broadcasting in that form which corresponds to a national service (within the meaning of Part III of the 1990 Act) provided by him otherwise than in that form, and
  - (b) which corresponds to that national service.
- (3) For the purposes of this Part a service provided for broadcasting in digital form corresponds to a national service (within the meaning of Part III of the 1990 Act) if, and only if, in every calendar month—
  - (a) at least 80 per cent. of so much of the national service as consists of programmes, consists of programmes which are also included in the digital service in that month, and
  - (b) at least 50 per cent. of so much of the national service as consists of such programmes is broadcast at the same time on both services.
- (4) The Secretary of State may by order amend subsection (3)(a) or (b) by substituting for the percentage for the time being specified there a different percentage specified in the order.
- (5) Before making an order under subsection (4) the Secretary of State shall consult such persons appearing to him to represent listeners as he thinks fit.
- (6) An order under subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In subsection (3) “programme” does not include an advertisement.

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#### Commencement Information

- I2** S. 41 wholly in force at 29.1.1998; s. 41 not in force at Royal Assent see s. 149; s. 41 in force for certain purposes at 1.10.1996 by [S.I. 1996/2120](#), [art. 4](#), [Sch. 1](#); s. 41 in force at 29.1.1998 insofar as not already in force by [S.I. 1998/188](#), [art. 3](#)

### *General provisions about licences*

#### **42 Licences under Part II.**

- (1) Any licence granted by the Radio Authority (in this Part referred to as “the Authority”) under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of this Part.
- (2) The Authority—
  - (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it, and
  - (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;
 and nothing in this Part shall be construed as affecting the operation of this subsection or of section 44(1) or (2)(b) or (c).
- (3) The Authority may vary a licence by a notice served on the licence holder if—
  - (a) in the case of a variation of the period for which a licence having effect for a specified period is to continue in force, the licence holder consents, or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Authority about the variation.
- (4) Paragraph (a) of subsection (3) does not affect the operation of section 59(1)(b); and that subsection shall not authorise the variation of any condition included in a licence in pursuance of section 55(1).
- (5) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Authority.
- (6) Without prejudice to the generality of subsection (5), the Authority shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.
- (7) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the <sup>M5</sup>Wireless Telegraphy Act 1949 or section 7 of the <sup>M6</sup>Telecommunications Act 1984 in connection with the provision of that service.

#### Marginal Citations

- M5** 1949 c. 54.

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M6 1984 c. 12.

### 43 General licence conditions.

- (1) A licence may include—
  - (a) such conditions as appear to the Authority to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under the 1990 Act or this Act;
  - (b) conditions enabling the Authority to supervise and enforce technical standards in connection with the provision of the licensed service;
  - (c) conditions requiring the payment by the licence holder to the Authority (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
  - (d) conditions requiring the licence holder to furnish the Authority, in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under this Act;
  - (e) conditions requiring the licence holder, if found by the Authority to be in breach of any condition of his licence, to reimburse to the Authority, in such circumstances as are specified in any conditions, any costs reasonably incurred by them in connection with the breach of that condition;
  - (f) conditions providing for such incidental and supplemental matters as appear to the Authority to be appropriate.
- (2) A licence may in particular include—
  - (a) conditions requiring the licence holder—
    - (i) to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified, or
    - (ii) (except to the extent that the Authority consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified; and
  - (b) conditions requiring the licence holder to permit—
    - (i) any employee of, or person authorised by, the Authority, or
    - (ii) any officer of, or person authorised by, the Secretary of State,to enter any premises which are used in connection with the broadcasting of the licensed service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.
- (3) The fees required to be paid to the Authority by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by the Authority; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Authority to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Authority regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 8 to the 1990 Act.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Authority shall publish every such tariff in such manner as they consider appropriate.

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- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide the Authority with any information, and
  - (b) in purported compliance with that condition provides them with any information which is false in a material particular,
- he shall be taken for the purposes of sections 59, 62 and 66 of this Act and section 111 of the 1990 Act to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

#### **44 Restrictions on holding of licences under Part II.**

- (1) The Authority shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to the 1990 Act (as amended by this Act); and
  - (b) that any requirements imposed by or under Parts III to V of that Schedule (as so amended) are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Authority may accordingly—
- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
    - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
  - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
  - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
  - (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
    - (i) shareholdings in the body, or
    - (ii) the directors of the body,
 where such proposals are known to the body;
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- (3) Where the Authority—
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
  - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,



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any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.

- (4) Those provisions shall not so have effect if the Authority decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as the Authority consider necessary or expedient to ensure that where—
  - (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,the Authority may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.
- (6) The Authority shall not serve any such notice on the licence holder unless—
  - (a) the Authority have notified him of the matters complained of 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 (7)—
    - (i) they have also given him an opportunity of complying with Parts III and IV of Schedule 2 to the 1990 Act within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.
- (7) A relevant change falls within this subsection if it consists only in one or more of the following—
  - (a) a reduction in the total number of points, calculated in accordance with paragraph 9 of Part III of Schedule 2 to the 1990 Act, attributable to all the services referred to in paragraph 8(1) or (2)(a) or (b) of that Part of that Schedule,
  - (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule), or
  - (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (8) 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,
  - (b) any change in the persons having control over or interests in the body, or
  - (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2 to the 1990 Act,being (in any case) a change which is such that, if it fell to the Authority to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

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### *Radio multiplex services*

#### **45 Assignment of frequencies by Secretary of State.**

- (1) The Secretary of State may by notice assign to the Authority, for the purpose of the provision of radio multiplex services falling to be licensed by them under this Part, such frequencies as he may determine.
- (2) Any frequency assigned by the Secretary of State under subsection (1) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (3) When assigning a frequency under subsection (1), the Secretary of State shall specify whether the frequency is to be assigned for the purpose of the provision of a national radio multiplex service or for the purpose of the provision of a local radio multiplex service; and any frequency assigned under that subsection shall be taken to be so assigned only for that purpose.
- (4) When assigning a frequency under subsection (1) for the purpose of the provision of a national radio multiplex service, the Secretary of State may also direct the Authority to secure that the holder of the licence to provide that service is required—
  - (a) to broadcast one or more digital sound programme services of a particular character, or
  - (b) not to broadcast more than a specified number of digital sound programme services of a particular character.
- (5) References in subsection (4) to digital sound programme services of a particular character include references to digital sound programme services catering for the tastes and interests of persons living within a specified area or locality.
- (6) The Secretary of State may by notice revoke the assignment under subsection (1) of any frequency specified in the notice, and may do so whether or not that frequency is for the time being one on which a radio multiplex service is being provided.

#### **46 National radio multiplex licences.**

- (1) Where the Authority propose to grant a licence to provide a national radio multiplex 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 frequency on which the service is to be provided,
  - (c) specifying, in such manner as the Authority consider appropriate, the area of the United Kingdom in which the frequency is to be available,
  - (d) where digital capacity on the frequency is reserved in pursuance of a direction under section 48 for the broadcasting of a simulcast radio service, stating that fact and specifying the capacity reserved and the identity of the national service or services concerned,
  - (e) where the frequency is one in respect of which a direction under section 45(4) has been given, setting out the terms of the direction,
  - (f) inviting applications for the licence and specifying the closing date for such applications,
  - (g) specifying the fee payable on any application made in pursuance of the notice, and

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- (h) stating whether any percentage of multiplex revenue for each accounting period would be payable by an applicant in pursuance of section 55 if he were granted the licence and, if so, specifying that percentage.
- (2) Unless an order under section 55(2) is in force—
- (a) the consent of the Secretary of State shall be required for so much of the notice as relates to the matters specified in subsection (1)(h), and
  - (b) the Authority may if they think fit (with that consent) specify under subsection (1)(h)—
    - (i) different percentages in relation to different accounting periods falling within the period for which the licence would be in force, and
    - (ii) a nil percentage in relation to any accounting period so falling.
- (3) When publishing a notice under subsection (1), the Authority—
- (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii) and (f), and
  - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) 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 subsection (1)(g),
  - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
    - (i) the parts of the area specified under subsection (1)(c) which would be within the coverage area of the service,
    - (ii) the timetable in accordance with which that coverage would be achieved, and
    - (iii) the technical means by which it would be achieved,
  - (c) the applicant's proposals as to the number of digital sound programme services to be broadcast and as to the characteristics of each of those services,
  - (d) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of those services would begin,
  - (e) the applicant's proposals as to the broadcasting of digital additional services,
  - (f) the applicant's proposals for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving the service,
  - (g) such information as the Authority may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
  - (h) such other information as the Authority may reasonably require for the purpose of considering the application.
- (5) In subsection (4)(f) "acquisition" includes acquisition on hire or loan.
- (6) 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 (b) to (h) of subsection (4).
- (7) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.

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- (8) The Authority shall, as soon as reasonably practicable after the date specified in a notice under subsection (1) as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,
    - (ii) the proposals submitted by him under subsection (4)(c), and
    - (iii) such other information connected with his application as the Authority consider appropriate; and
  - (b) a notice—
    - (i) inviting representations to be made to them with respect to any of the applications, and
    - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

#### **47 Award of national radio multiplex licences.**

- (1) Where the Authority have published a notice under section 46(1), they shall in determining whether, or to whom, to award the national radio multiplex licence in question, have regard to the extent to which, taking into account the matters specified in subsection (2) and any representations received by them in pursuance of section 46(8)(b) with respect to those matters, the award of the licence to each applicant would be calculated to promote the development of digital sound broadcasting in the United Kingdom otherwise than by satellite.
- (2) The matters referred to in subsection (1) are—
  - (a) the extent of the coverage area (within the area specified in the notice under section 46(1)(c)) proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 46(4)(b),
  - (b) the timetables proposed by the applicant under section 46(4)(b)(ii) and (d),
  - (c) the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
  - (d) the capacity of the digital sound programme services proposed to be included in the service to appeal to a variety of tastes and interests,
  - (e) any proposals by the applicant for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving the service, and
  - (f) whether, in contracting or offering to contract with persons providing digital sound programme services or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.
- (3) In subsection (2)(e) “acquisition” includes acquisition on hire or loan.
- (4) Where a direction under section 45(4) has effect in relation to any frequency, the Authority shall not award a national radio multiplex licence in relation to that frequency unless they are satisfied that the proposals submitted by the applicant under section 46(4)(c) comply with the direction.

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- (5) Where the Authority have awarded a national radio multiplex licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish in such manner as they consider appropriate—
    - (i) the name of the person to whom the licence has been awarded, and
    - (ii) such other information as the Authority consider appropriate, and
  - (b) grant the licence to that person.

#### **48 Reservation of capacity for independent national broadcasters.**

- (1) The Secretary of State may, in assigning a frequency to the Authority under section 45 for the purpose of the provision of a national radio multiplex service, direct the Authority that, in relation to each independent national broadcaster specified in the direction, an amount of digital capacity specified in the direction is to be reserved, subject to the provisions of this Part, for the broadcasting of a simulcast radio service.
- (2) Before giving a direction under subsection (1) in relation to any simulcast radio service, the Secretary of State shall consult the Authority as to the amount of digital capacity which the Authority consider appropriate in all the circumstances for the broadcasting of that service.
- (3) Where a direction under subsection (1) has been given in relation to a frequency—
- (a) the Authority shall include in any national radio multiplex licence granted in respect of that frequency such conditions as appear to them to be appropriate for securing that, in consideration of the making by any independent national broadcaster in relation to whom capacity is reserved of such payments as are from time to time agreed between him and the licence holder or (in default of agreement) determined under this section, the licence holder uses such digital capacity not exceeding the amount reserved under subsection (1) as may from time to time be requested by the independent national broadcaster for the broadcasting of services provided by that broadcaster, and
  - (b) the Authority shall vary the licence under which the national service is provided to include such conditions relating to the broadcasting of the simulcast radio service as they may determine.
- (4) Where the holder of a national radio multiplex licence and an independent national broadcaster fail to agree as to the payments to be made under a condition included in the licence in accordance with subsection (3)(a), either of them may refer the matter to the Authority for their determination.
- (5) Before making a determination under subsection (4), the Authority shall give the licence holder and the independent national broadcaster an opportunity of making representations to the Authority about the matter.
- (6) In making any determination under subsection (4), the Authority shall have regard to—
- (a) the expenses incurred, or likely to be incurred, by the licence holder in providing the national radio multiplex service and in broadcasting the simulcast radio service in question, and
  - (b) the terms on which persons providing national radio multiplex services contract with persons providing national digital sound programme services for the broadcasting of those services.

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#### **49 Duty of Authority to reserve digital capacity for certain purposes of BBC.**

- (1) In exercising their powers to grant local radio multiplex licences, the Authority shall reserve to the BBC such digital capacity as the Authority consider appropriate in all the circumstances with a view to enabling every BBC local radio service and every BBC radio service for Wales, Scotland or Northern Ireland to be received in digital form within a coverage area which, so far as reasonably practicable, corresponds with the coverage area for that service as provided otherwise than in digital form.
- (2) The circumstances to which the Authority may have regard in performing their duty under subsection (1) include the likely demand for digital capacity by persons providing or proposing to provide local digital sound programme services.
- (3) Where the Authority propose to grant a licence to provide a local radio multiplex service, they shall notify the BBC of the Authority's proposals for reserving to the BBC digital capacity on the frequency in respect of which the licence is to be granted in respect of the area or locality in which it is to be granted.
- (4) If the BBC do not give their consent to the proposals within such period as the Authority may specify in their notice under subsection (3), the Authority shall refer the proposals to the Secretary of State, who may determine—
  - (a) whether any digital capacity is to be reserved to the BBC on the grant of the licence, and
  - (b) if so, the amount of that capacity.
- (5) Before making any determination under subsection (4), the Secretary of State shall give the Authority and the BBC an opportunity of making representations to him about the Authority's proposals.
- (6) Where a local radio multiplex licence is granted in respect of a frequency and area or locality in respect of which digital capacity is reserved in pursuance of this section, the licence shall include such conditions as appear to the Authority to be appropriate for the purpose of securing that, in consideration of the making by the BBC of such payments as are from time to time agreed between the holder of the licence and the BBC, the holder of the licence uses such digital capacity as may from time to time be requested by the BBC (not exceeding the amount so reserved) for the broadcasting of services provided by the BBC.

#### **50 Local radio multiplex licences.**

- (1) Where—
  - (a) the BBC have given their consent to proposals made to them under subsection (3) of section 49, or
  - (b) the Secretary of State has made a determination under subsection (4) of that section,
 the Authority shall publish, in such manner as they consider appropriate, a notice under subsection (2).
- (2) A notice under this subsection is a notice—
  - (a) stating that the Authority propose to grant a local radio multiplex licence,
  - (b) specifying the frequency on which the service is to be provided,
  - (c) specifying, in such manner as the Authority consider appropriate, the area or locality in the United Kingdom in which it is to be available,

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- (d) stating whether in pursuance of a direction under section 49 any digital capacity on the frequency in that area or locality is to be reserved for the broadcasting in digital form of one or more BBC radio services and, if so, specifying the capacity reserved and the identity of the BBC radio services concerned,
  - (e) inviting applications for the licence and specifying the closing date for such applications, and
  - (f) specifying the fee payable on any application made in pursuance of the notice.
- (3) When publishing a notice under subsection (2), the Authority—
- (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii), and
  - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) Any application made in pursuance of a notice under subsection (2) must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (2)(f),
  - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
    - (i) the parts of the area or locality specified under subsection (2)(c) which would be within the coverage area of the service,
    - (ii) the timetable in accordance with which that coverage would be achieved, and
    - (iii) the technical means by which it would be achieved,
  - (c) the applicant's proposals as to the number of digital sound programme services (other than BBC services) to be broadcast and as to the characteristics of each of those services,
  - (d) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of those services would begin,
  - (e) the applicant's proposals as to the broadcasting of digital additional services,
  - (f) such information as the Authority may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
  - (g) such other information as the Authority may reasonably require for the purpose of considering the application.
- (5) 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 (b) to (g) of subsection (4).
- (6) 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.
- (7) The Authority shall, as soon as reasonably practicable after the date specified in a notice under subsection (2) as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,
    - (ii) the proposals submitted by him under subsection (4)(c), and

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- (iii) such other information connected with his application as the Authority consider appropriate; and
- (b) a notice—
  - (i) inviting representations to be made to them with respect to any of the applications, and
  - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

## **51 Award of local radio multiplex licences.**

- (1) Where the Authority have published a notice under section 50(2), they shall in determining whether, or to whom, to award the local radio multiplex licence in question, have regard (in relation to each applicant) to the matters specified in subsection (2).
- (2) The matters referred to in subsection (1) are—
  - (a) the extent of the coverage area (within the area or locality specified in the notice under section 50(2)(c)) proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 50(4)(b),
  - (b) the timetables proposed by the applicant under section 50(4)(b)(ii) and (d),
  - (c) the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
  - (d) the extent to which the digital sound programme services (other than BBC services) proposed to be included in the service would cater for the tastes and interests of persons living in the area or locality for which the service is to be provided and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which those services would cater for those tastes and interests,
  - (e) the extent to which any such digital sound programme services would broaden the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which it is to be provided and, in particular, the extent to which they would cater for tastes and interests different from those already catered for by local digital sound programme services provided for that area or locality,
  - (f) the extent to which the application is supported by persons living in that area or locality, and
  - (g) whether, in contracting or offering to contract with persons providing digital sound programme services or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of those services.
- (3) In considering the matters referred to in subsection (2), the Authority shall take into account any representations made to them in pursuance of section 50(7)(b) with respect to those matters.
- (4) Where the Authority have awarded a local radio multiplex licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
  - (a) publish in such manner as they consider appropriate—
    - (i) the name of the person to whom the licence has been awarded, and
    - (ii) such other information as the Authority consider appropriate, and



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- (b) grant the licence to that person.

**52 Power to require two or more local radio multiplex licences to be granted to one person.**

- (1) The Authority may, before publishing a notice under section 50(2), determine that two or more local radio multiplex licences are on that occasion to be granted to one person.
- (2) Where the Authority have so determined, they shall publish a single notice under section 50(2) in relation to the licences.
- (3) In relation to any application made in pursuance of such a notice—
  - (a) references in section 50(4) and 51(2) to the proposed service shall have effect as references to each of the proposed services, and
  - (b) the reference in section 51(1) to the local radio multiplex licence shall have effect as a reference to all the licences concerned.
- (4) Nothing in this section applies in relation to the renewal of a local radio multiplex licence.

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

- (1) Subject to subsection (2), subsection (3) applies where at any time after a radio multiplex 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.
- (2) Subsection (3) shall not apply in the case of any person by virtue of paragraph (b) of subsection (1) 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 this subsection applies—
  - (a) the Authority shall serve on the person to whom the licence has been granted a notice revoking the licence as from the time the notice is served on him, and
  - (b) section 47 or 51 shall (subject to subsection (4)) have effect as if he had not made an application for the licence.
- (4) Section 47 or 51 shall not have effect as mentioned in subsection (3) if the Authority decide that it would be desirable to publish a fresh notice under section 46(1) or 50(2) in respect of the grant of the licence.
- (5) Where the Authority revoke a radio multiplex 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 specified financial penalty not exceeding—
  - (a) in the case of a local radio multiplex licence, £50,000, or
  - (b) in the case of a national radio multiplex licence, whichever is the greater of—

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- (i) £50,000, or
  - (ii) the prescribed amount.
- (6) In subsection (5)(b)(ii) “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 multiplex revenue for that accounting period (as determined in accordance with section 56), and
  - (b) in any other case, 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (7) Any financial penalty payable by any body by virtue of subsection (5) shall, in addition to being recoverable from that body as provided by section 71(4), be recoverable by the Authority as a debt due to them from any person who controls that body.

#### **54 Conditions attached to national or local radio multiplex licence.**

- (1) A radio multiplex licence shall include such conditions as appear to the Authority to be appropriate for securing—
- (a) that the licensed service is established by the licence holder in accordance with the timetable and other proposals indicated in the technical plan submitted under section 46(4)(b) or 50(4)(b),
  - (b) the implementation of any proposals submitted by the licence holder under section 46(4)(c) to (f) or 50(4)(c) to (e),
  - (c) that all digital sound programme services broadcast under the licence are provided—
    - (i) in the case of a national radio multiplex licence, by the holder of a national digital sound programme licence under section 60, and
    - (ii) in the case of a local radio multiplex licence, by the BBC or the holder of a local digital sound programme licence under that section,
  - (d) that all digital additional services broadcast under the licence are provided by the holder of a licence under section 64,
  - (e) that in the terms on which the holder of the licence contracts, or offers to contract, for the broadcasting of digital sound programme services or digital additional services, he does not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons,
  - (f) that the holder of the licence does not, in any agreement with a person providing a digital sound programme service or digital additional services which entitles that person to use a specified amount of digital capacity on the frequency or frequencies to which the licence relates, restrict that person’s freedom to make arrangements with some other person as to the use of any of that digital capacity (except to the extent that the restriction is reasonably required for the purpose of ensuring the technical quality of the broadcasts or for the purpose of securing compliance with any other condition of the licence),
  - (g) that the signals carrying the radio multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area or

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- locality for which the service is provided as is for the time being reasonably practicable, and
- (h) that, while the licence is in force, at least [<sup>F11</sup>80 per cent.] of digital capacity on the frequency or frequencies to which the licence relates is available for the broadcasting of digital sound programme services, simulcast radio services, programme-related services or relevant technical services.
- (2) In paragraph (1)(h)—
- (a) “programme-related service” means any digital additional service consisting in the provision of services (apart from advertising) which—
- (i) are ancillary to the programmes included in one or more digital sound programme services, simulcast radio services or local or national services (within the meaning of Part I of the 1990 Act) and are directly related to the contents of those programmes, or
- (ii) relate to the promotion or listing of such programmes, and
- (b) “relevant technical service” means any technical service which relates to one or more digital sound programme services.
- (3) The Secretary of State may, after consulting the Authority, by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in paragraph (h) of that subsection.
- (4) No order under subsection (3) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (5) Any conditions imposed in pursuance of subsection (1)(a) or (b) may be varied by the Authority with the consent of the licence holder (and section 42(3)(b) shall accordingly not apply to any such variation).
- (6) Where the licence holder applies to the Authority for the variation of any condition imposed in pursuance of subsection (1)(b) and relating to the characteristics of any of the digital sound programme services to be broadcast under the licence, the Authority shall vary the condition accordingly unless—
- (a) it appears to the Authority that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished, or
- (b) in the case of a national radio multiplex licence in relation to which a direction under section 45(4) has effect, the Authority are not satisfied that the proposed variation complies with that direction.
- (7) Section 94 of the 1990 Act (Government control over licensed services) shall apply in relation to a radio multiplex service licensed under this Part as it applies in relation to a service licensed under Part III of that Act.

#### Textual Amendments

**F11** Words in s. 54(1)(h) substituted (27.5.1998) by S.I. 1998/1326, art. 2

## 55 Additional payments to be made in respect of national radio multiplex licences.

- (1) Where a national radio multiplex licence is granted in pursuance of a notice under subsection (1) of section 46 which specified a percentage of multiplex revenue under paragraph (h) of that subsection, the licence shall include conditions requiring the

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licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 43(1)(c)) in respect of each accounting period of his falling within the period for which the licence is in force, an amount representing such percentage of the multiplex revenue for that accounting period (determined under section 56) as was specified in the notice.

- (2) The Secretary of State may by order provide that, in relation to any notice under subsection (1) of section 46 published while the order is in force, no percentage shall be specified under paragraph (h) of that subsection.
- (3) Any order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A national radio multiplex 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), and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may in particular include conditions—
  - (a) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (6) Where—
  - (a) the first complete accounting period of the licence holder falling within the period for which the licence is in force (“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) 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.

## **56 Multiplex revenue.**

- (1) For the purposes of section 55(1) the multiplex revenue for each accounting period of the holder of a national radio multiplex licence shall consist of—
  - (a) all payments received or to be received by him or any person connected with him from a person other than a programme provider or an additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital sound programme service or digital additional service broadcast by means of the national radio multiplex service to which the licence relates, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital sound programme service or digital additional service,

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- (b) all payments received or to be received by him or any person connected with him in respect of the broadcasting of any simulcast radio service by means of the national radio multiplex service,
  - (c) all payments received or to be received by any programme provider or any person connected with him from a person other than the holder of the radio multiplex licence, an additional service provider or another programme provider—
    - (i) in consideration of the inclusion in that period, in any digital sound programme service provided by him for broadcasting by means of the national radio multiplex service, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital sound programme service, and
  - (d) all payments received or to be received by any additional services provider or any person connected with him from a person other than the holder of the radio multiplex licence, a programme provider or another additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital additional service provided by him for broadcasting by means of the national radio multiplex service, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital additional service.
- (2) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (1)(a)(i), any payments are made to the holder of the radio multiplex licence or any person connected with him to meet any payments payable by the licence holder by virtue of section 55(1), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (3) In the case of an advertisement included as mentioned in subsection (1)(a)(i), (c)(i) or (d)(i) under arrangements made between—
  - (a) the holder of the radio multiplex licence, a programme provider or an additional services provider or any person connected with any of them, and
  - (b) a person acting as an advertising agent,the amount of any receipt by the licence holder, programme provider or additional services provider 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 (4), be the amount of the payment by the advertiser after the deduction of the commission.
- (4) If the amount deducted by way of commission as mentioned in subsection (3) 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.
- (5) If, in any accounting period of the holder of the radio multiplex licence, a programme provider or an additional services provider or a person connected with any of them derives, in relation to any programme to be included in the relevant service, any financial benefit (whether direct or indirect) from payments made by any person other than the licence holder, by way of sponsorship, for the purpose of defraying

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or contributing towards costs incurred or to be incurred in connection with that programme, the relevant payments shall be taken to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.

(6) In subsection (5)—

(a) “the relevant service” means—

- (i) in relation to a programme provider or a person connected with him, any digital sound programme service provided as mentioned in subsection (1)(c)(i), and
- (ii) in relation to an additional services provider or a person connected with him, any digital additional service provided as mentioned in subsection (1)(d)(i), and

(b) “relevant payments” means—

- (i) in relation to a programme provider, the payments referred to in subsection (1)(c), and
- (ii) in relation to an additional services provider, the payments referred to in subsection (1)(d).

(7) Where, in any accounting period of the holder of the radio multiplex licence—

- (a) the licence holder provides a digital sound programme service or digital additional service for broadcasting by means of the multiplex service,
- (b) the licence holder is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(a) being made to the licence holder,
- (c) a programme provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(c) being made to the programme provider, or
- (d) an additional services provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(d) being made to the additional services provider,

the Authority may, if they consider that the amount which would (apart from this subsection) be the multiplex revenue for that accounting period is less than it would have been if the digital sound programme service or digital additional service had been provided, or the activity engaged in, by another person at arm’s length, treat the multiplex revenue as increased by the amount of the difference.

(8) Where, in any accounting period of the holder of the multiplex licence, the licence holder or a programme provider or additional services provider receives payments falling within subsection (1)(a), (b), (c) or (d) from a person connected with him and it appears to the Authority that the amount which (apart from this subsection) would be the multiplex revenue for that accounting period is less than it would have been if the arrangements between him and the connected person were such as might be expected between parties at arm’s length, the Authority may treat the multiplex revenue as increased by the amount of the difference.

(9) In this section—

“additional services provider”, in relation to a national radio multiplex licence, means any person who provides any digital additional service for broadcasting by means of the radio multiplex service to which the licence relates;

“programme provider”, in relation to a national radio multiplex licence, means any person who provides a digital sound programme service for

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broadcasting by means of the radio multiplex service to which the licence relates.

## **57 Attribution of multiplex revenue to licence holder and others.**

- (1) For the purposes of section 59(3), the share of multiplex revenue attributable to the holder of a national radio multiplex licence in respect of any accounting period of his shall be—
  - (a) the aggregate of—
    - (i) payments falling within paragraph (a) or (b) of section 56(1), and
    - (ii) payments received or to be received by him from programme providers and additional services providers in respect of the provision of radio multiplex services in that period,less
  - (b) the amount of any payments made or to be made to programme providers or additional service providers which would fall within paragraph (c) or (d) of section 56(1) but for the fact that they are received from the holder of the national radio multiplex licence.
- (2) For the purposes of section 62(3) or section 66(3), the share of multiplex revenue attributable to a programme provider or additional services provider in relation to a national radio multiplex service in respect of any accounting period of the holder of the radio multiplex licence shall be—
  - (a) the aggregate of—
    - (i) payments falling within paragraph (c) or (d) of section 56(1), and
    - (ii) payments received or to be received from the holder of the radio multiplex licence which would fall within one of those paragraphs but for the fact that they are received from the holder of the radio multiplex licence,less
  - (b) the amount of any payments made or to be made to the holder of the radio multiplex licence in respect of the provision of radio multiplex services in that period.
- (3) In a case falling within subsection (7) or (8) of section 56, the Authority may treat the share of multiplex revenue attributable to any person for the accounting period of the holder of the national radio multiplex licence as increased by such amount as they consider appropriate to take account of the circumstances mentioned in that subsection.
- (4) In this section “additional services provider” and “programme provider”, in relation to a national radio multiplex licence, have the same meaning as in section 56.

## **58 Duration and renewal of national or local radio multiplex licences.**

- (1) A radio multiplex licence shall (subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 59(8)) continue in force for a period of twelve years.
- (2) A radio multiplex licence which is granted within six years of the commencement of this section may be renewed on one occasion in accordance with this section for a period of twelve years beginning with the date on which it would otherwise expire.

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- (3) An application for the renewal of a radio multiplex licence under subsection (2) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (4) At any time before determining the application, the Authority may—
  - (a) require the applicant to furnish—
    - (i) a technical plan which supplements that submitted by the licence holder under section 46(4)(b) or 50(4)(b), and
    - (ii) in the case of a national radio multiplex licence, proposals which supplement that submitted by the licence holder under section 46(4)(f), and
  - (b) notify the applicant of requirements which must be met by that supplementary technical plan or those supplementary proposals and relate to the matters referred to in section 46(4)(b)(i) and (ii) or 50(4)(b)(i) and (ii).
- (5) The consent of the Secretary of State shall be required for any exercise by the Authority of their powers under subsection (4) and for any decision by the Authority not to exercise those powers; and in deciding whether to give his consent the Secretary of State shall have regard to any report made to him under subsection (1)(b) of section 67 and to any representations received by him on consultation under subsection (4) of that section.
- (6) Where any such application is made before the relevant date, the Authority may postpone consideration of it by them for as long as they think appropriate having regard to subsection (10).
- (7) Where an application for the renewal of a radio multiplex licence has been duly made to the Authority, they may refuse the application only if—
  - (a) it appears to them that the applicant has failed to comply with any of the conditions included in his licence,
  - (b) any supplementary technical plan or supplementary proposals submitted under subsection (4)(a) fail to meet requirements notified to the applicant under subsection (4)(b), or
  - (c) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied with the conditions to be included in the licence as renewed.
- (8) Subject to subsection (9), on the grant of any such application the Authority may with the consent of the Secretary of State, and shall if so required by him—
  - (a) specify a percentage different from that specified under section 46(1)(h) as the percentage of multiplex revenue for each accounting period of his that will be payable by the applicant in pursuance of section 55(1) during the period for which the licence is to be renewed, or
  - (b) specify such a percentage where none was specified under section 46(1)(h); and the Authority may specify under paragraph (a) or (b) either of the things mentioned in section 46(2)(b).
- (9) Where an order under section 55(2) is in force on the relevant date, no percentage of multiplex revenue shall be payable as mentioned in subsection (8)(a) during the period for which the licence is to be renewed.
- (10) Where the Authority have granted a person's application under this section, they shall formally renew his licence from the date on which it would otherwise expire; but in



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the case of a national multiplex licence they shall not so renew his licence unless they have notified him of any percentage specified by them under subsection (8) 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.

- (11) Where a radio multiplex licence has been renewed under this section, the licence as renewed shall include such further conditions as appear to the Authority to be appropriate for securing the implementation of any supplementary technical plan and supplementary proposals submitted under subsection (4)(a).
- (12) In this section “the relevant date”, in relation to a radio multiplex licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 46(1) or 50(2) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the service formerly provided under that licence.
- (13) Nothing in this section prevents the holder of a radio multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 46(1) or 50(2).

## **59 Enforcement of national or local radio multiplex licences.**

- (1) If the Authority are satisfied that the holder of a radio multiplex licence has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may (subject to 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, or
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a national radio multiplex licence shall not exceed whichever is the greater of—
  - (a) £50,000, or
  - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
  - (a) in a case where a penalty under this section has not previously been imposed on the holder of the radio multiplex licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the share of multiplex revenue attributable to him for his last complete accounting period (as determined in accordance with section 57), and
  - (b) in any other case, 5 per cent. of the share of multiplex revenue attributable to him 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 share of multiplex revenue attributable to him for that accounting period (as so determined).
- (4) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a local radio multiplex licence shall not exceed £50,000.

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- (5) The Authority shall not serve on any person any notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (6) 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.
- (7) Where the Authority serve a notice on a BBC company under any provision of this section, they shall send a copy of the notice to the Secretary of State.
- (8) Subject to subsection (9), section 111 of the 1990 Act (power to revoke licence granted under Chapter II of Part III of the 1990 Act) shall have effect in relation to a radio multiplex licence as it has effect in relation to a licence under Chapter II of Part III of the 1990 Act.
- (9) In its application in relation to a radio multiplex licence, section 111 of the 1990 Act shall have effect—
  - (a) with the substitution in subsection (1)(a) for the reference to Part III of the 1990 Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and the reference to that subsection in subsection (6).

#### *Digital sound programme services*

### **60 Licensing of digital sound programme services.**

- (1) For the purposes of this Part a digital sound programme service is—
  - (a) a “national digital sound programme service” if it is provided for broadcasting by means of a national radio multiplex service, and
  - (b) a “local digital sound programme service” if it is provided for broadcasting by means of a local radio multiplex service.
- (2) A licence to provide digital sound programme services (in this Part referred to as a “digital sound programme licence”) may be either—
  - (a) a licence to provide national digital sound programme services (in this Part referred to as a “national digital sound programme licence”), or
  - (b) a licence to provide local digital sound programme services (in this Part referred to as a “local digital sound programme licence”).
- (3) An application for a digital sound programme licence shall—
  - (a) be made in such manner as the Authority may determine, and
  - (b) be accompanied by such fee (if any) as they may determine.
- (4) At any time after receiving such an application and before determining it, the Authority may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.

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- (6) Where an application for a digital sound programme licence is made to the Authority in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 42(2)(a) or 44(1).
- (7) Subject to subsection (8), section 90 of the 1990 Act (general provisions relating to services licensed under Part III of that Act) shall apply in relation to a digital sound programme service licensed under this Part of this Act as it applies in relation to a national or local service (within the meaning of Part III of the 1990 Act).
- (8) In its application in relation to a digital sound programme service licensed under this Part, section 90 of the 1990 Act shall have effect with the omission of subsection (7) and with the substitution for subsections (3) and (4) of the following—
- “(3) The appropriate requirement referred to in subsection (2)(a) is—
- (a) in the case of a national digital sound programme service, that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
- (b) in the case of a local digital sound programme service, that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on such matters.
- (4) In applying subsection (3)(a) to a national digital sound programme service a series of programmes may be considered as a whole; and in applying subsection (3)(b) to a local digital sound programme service the programmes included in that service shall be taken as a whole.”
- (9) Subject to subsection (10), sections 91 to 96 of the 1990 Act (general provisions relating to services licensed under Part III of that Act) shall apply in relation to a digital sound programme service licensed under this Part as they apply in relation to a licensed service (within the meaning of Part III of the 1990 Act).
- (10) In its application in relation to a digital sound programme service, section 96(1)(b) shall have effect as if the reference to the Authority’s functions under Chapter II of Part III of the 1990 Act included a reference to their functions under this Part.

## **61 Duration and conditions of digital sound programme licence.**

- (1) Subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 62(10), a digital sound programme licence shall continue in force until it is surrendered by its holder.
- (2) A digital sound programme licence shall include such conditions as appear to the Authority to be appropriate for requiring the holder of the licence—
- (a) on entering into any agreement with the holder of a radio multiplex licence for the provision of a digital sound programme service to be broadcast by means of a radio multiplex service, to notify the Authority—
- (i) of the identity of the radio multiplex service,
- (ii) of the characteristics of the digital sound programme service to which the agreement relates, and
- (iii) of the period during which it will be provided,

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- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify the Authority of the variation so far as relating to those matters, and
  - (c) where he is providing a digital sound programme service to the holder of a radio multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Authority of that fact.
- (3) A digital sound programme licence shall also include such conditions as appear to the Authority to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in subsection (2)(a), to submit to the Authority 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 service.
- (4) Where the holder of a digital sound programme licence has submitted proposals to the Authority in accordance with a condition included in the licence by virtue of subsection (3) or has failed to comply with such a condition, the Authority may, after consulting him, vary the licence so as to include in the licence such further conditions as they consider appropriate in relation to the matters referred to in that subsection.

## **62 Enforcement of digital sound programme licences.**

- (1) If the Authority are satisfied that the holder of a digital sound programme licence has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may (subject to 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 providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice, and
  - (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 digital sound programme licence shall not exceed whichever is the greater of—
- (a) £50,000, and
  - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
- (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital sound programme licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to national radio multiplex services in respect of relevant accounting periods (as determined in accordance with section 57), and
  - (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) In subsection (3) “relevant accounting period”, in relation to a national radio multiplex service, means the last accounting period of the holder of the national radio multiplex licence.

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- (5) Where, in the case of any national radio multiplex service, the first accounting period of the holder of the national radio multiplex licence throughout which the holder of the digital sound programme licence provides a digital sound programme service for broadcasting by means of the radio multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) the share of multiplex revenue attributable to the holder of the digital sound programme licence in relation to that radio multiplex service for the relevant accounting period shall be taken to be the amount which the Authority estimate to be the share of multiplex revenue attributable to him for the first period.
- (6) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a local digital sound programme licence shall not exceed £50,000.
- (7) The Authority shall not serve on any person any notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (8) 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.
- (9) Where the Authority serve a notice on a BBC company under any provision of this section, they shall send a copy of the notice to the Secretary of State.
- (10) Subject to subsections (11) and (12), section 109 (power to require scripts etc. or broadcasting of correction or apology or not to repeat programme) and section 111 (power to revoke licences) of the 1990 Act shall apply in relation to a digital sound programme licence as they apply in relation to a licence under Chapter II of Part III of the 1990 Act.
- (11) In its application in relation to a digital sound programme licence, section 109(1) of the 1990 Act shall have effect with the substitution for the reference to a direction under Part III of that Act of a reference to a direction under this Part.
- (12) In its application in relation to a digital sound programme licence, section 111 of the 1990 Act shall have effect—
  - (a) with the substitution for the reference in subsection (1)(a) to Part III of that Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (13) It is hereby declared that any exercise by the Authority of their powers under subsection (1) in respect of any failure to comply with any condition of a digital sound programme licence shall not preclude any exercise by the Authority of their powers under section 109 of the 1990 Act in respect of that failure.

*Digital additional services provided on sound broadcasting frequencies*

## 63 Digital additional services.

- (1) In this Part “digital additional service” means any service which—

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- (a) is provided by any person with a view to its being broadcast in digital form by means of a radio multiplex service, whether by him or by some other person, but
  - (b) is not a digital sound programme service, a simulcast radio service, an ancillary service or a technical service.
- (2) In this Part “ancillary service” means any service which is provided by the holder of a digital sound programme licence or by an independent national broadcaster and consists in the provision of any service (other than advertising) which—
- (a) is ancillary to programmes included in a digital sound programme service or simulcast radio service provided by him and is directly related to their contents, or
  - (b) relates to the promotion or listing of such programmes.
- (3) In this Part “technical service” means a service which—
- (a) is provided for technical purposes connected with the encryption or decryption of one or more digital sound programme services or digital additional services, and
  - (b) is of a description specified in an order made by the Secretary of State.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **64 Licensing of digital additional services.**

- (1) An application for a licence to provide digital additional services (in this Part referred to as a “digital additional services licence”) shall—
- (a) be made in such manner as the Authority may determine, and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, the Authority may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) 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.
- (4) Where an application for a digital additional services licence is made to the Authority in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 42(2)(a) or 44(1).

#### **65 Duration and conditions of digital additional services licence.**

- (1) Subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 66(10), a digital additional services licence shall continue in force until it is surrendered by its holder.
- (2) A digital additional services licence shall include such conditions as appear to the Authority to be appropriate for requiring the holder of the licence—
- (a) on entering into any agreement with the holder of a radio multiplex licence for the provision of digital additional services to be broadcast by means of a radio multiplex service, to notify the Authority—
    - (i) of the identity of the radio multiplex service,

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- (ii) of the period during which the services will be provided, and
  - (iii) where under the agreement the holder of the digital additional services licence will be entitled to the use of a specified amount of digital capacity, of that amount,
- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii) to notify the Authority of the variation so far as relating to those matters, and
  - (c) where he is providing digital additional services to the holder of a radio multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Authority of that fact.

## **66 Enforcement of digital additional services licences.**

- (1) If the Authority are satisfied that the holder of a digital additional services licence has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may (subject to 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 providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice, or
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) Subject to subsection (4), the amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a digital additional services licence shall not exceed whichever is the greater of—
  - (a) £50,000, and
  - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
  - (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital additional services licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to national radio multiplex services in respect of relevant accounting periods (as determined in accordance with section 57), and
  - (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) Where the holder of a digital additional services licence has not provided any digital additional services for broadcasting by means of a national radio multiplex service, the amount of any penalty imposed on him under subsection (1)(a) shall not exceed £50,000.
- (5) In subsection (3) “relevant accounting period”, in relation to a national radio multiplex service, means the last accounting period of the holder of the national radio multiplex licence.
- (6) Where, in the case of any national radio multiplex service, the first accounting period of the holder of the national radio multiplex licence throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting

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by means of the radio multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) the share of multiplex revenue attributable to the holder of the digital additional services licence in relation to that radio multiplex service for the relevant accounting period shall be taken to be the amount which the Authority estimate to be the share of multiplex revenue attributable to him for the first period.

- (7) The Authority shall not serve on any person any notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (8) 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.
- (9) Where the Authority serve a notice on a BBC company under any provision of this section, they shall send a copy of the notice to the Secretary of State.
- (10) Subject to subsections (11) and (12), section 109 (power to require scripts etc. or broadcasting of correction or apology or not to repeat programme) and section 111 (power to revoke licences) of the 1990 Act shall apply in relation to a digital additional services licence as they apply in relation to a licence under Chapter II of Part III of the 1990 Act.
- (11) In its application in relation to a digital additional services licence, section 109(1) of the 1990 Act shall have effect with the substitution for the reference to a direction under Part III of that Act of a reference to a direction under this Part.
- (12) In its application in relation to a digital additional services licence, section 111 of the 1990 Act shall have effect—
  - (a) with the substitution for the reference in subsection (1)(a) to Part III of that Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (13) It is hereby declared that any exercise by the Authority of their powers under subsection (1) in respect of any failure to comply with any condition of a digital additional services licence shall not preclude any exercise by the Authority of their powers under section 109 of the 1990 Act in respect of that failure.

*Miscellaneous and supplemental*

**67 Review of digital radio broadcasting.**

- (1) For the purpose of considering for how long it would be appropriate for sound broadcasting services to continue to be provided in analogue form, the Secretary of State—
  - (a) shall keep under review the extent of—
    - (i) the provision in the United Kingdom of radio multiplex services,
    - (ii) the availability in the United Kingdom of digital sound programme services and the availability there in digital form of national services



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- (within the meaning of Part III of the 1990 Act) and the sound broadcasting services of the BBC, and
- (iii) the ownership or possession in the United Kingdom of equipment capable of receiving the services referred to in sub-paragraph (ii) when broadcast or transmitted in digital form,
- and the likely future extent of such provision, such availability and such ownership or possession, and
- (b) shall, on or before the fourth anniversary of the day on which the first national radio multiplex licence is granted under section 47, and at such time or times thereafter as he thinks fit, require the Authority and the BBC to report to him on the matters referred to in paragraph (a).
- (2) If the Authority or the BBC are required to submit a report under subsection (1)(b), they shall submit the report within twelve months of the date of the requirement.
- (3) Before making any report under this subsection (1)(b), the Authority shall consult—
- (a) the holders of all radio multiplex licences,
- (b) the holders of digital sound programme licences who are providing digital sound programme services which are being broadcast, and
- (c) such other persons providing services licensed by the Authority under this Part or Part III of the 1990 Act as the Authority think fit,
- and the Authority shall include in their report a summary of representations made to them by the persons consulted.
- (4) For the purpose mentioned in subsection (1), the Secretary of State shall, on requiring reports under subsection (1)(b), consult—
- (a) such persons appearing to him to represent listeners as he thinks fit, and
- (b) such other persons as he thinks fit,
- in connection with the matters referred to in subsection (1)(a) and also, if the Secretary of State thinks fit, as to the likely effects on listeners of any sound broadcasting service ceasing to be broadcast in analogue form.
- (5) In this section “sound broadcasting service” has the same meaning as in Part III of the 1990 Act.

## **68 Promotion of equal opportunities and fair treatment.**

- (1) Any national radio multiplex licence or national digital sound programme 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,
- (b) to make arrangements for promoting, in relation to employment by him, the fair treatment of disabled persons, and
- (c) to review those arrangements from time to time.
- (2) In subsection (1) “racial group” has the same meaning as in the <sup>M7</sup>Race Relations Act 1976, and “disabled person” has the same meaning as in the <sup>M8</sup>Disability Discrimination Act 1995.

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#### Marginal Citations

M7 1976 c. 74.

M8 1995 c. 50.

### 69 Power to vary amount of financial penalties.

- (1) The Secretary of State may by order amend any of the provisions specified in subsection (2) by substituting a different sum for the sum for the time being specified there.
- (2) The provisions referred to in subsection (1) are—
  - section 53(5)(a) and (b)(i);
  - section 59(2)(a) and (4);
  - section 62(2)(a) and (6); and
  - section 66(2)(a) and (4).
- (3) An order under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 70 Computation of multiplex revenue.

Part II of Schedule 1 (which contains provisions relating to the computation of multiplex revenue for the purposes of this Part) shall have effect.

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

- (1) Where the Authority receive in respect of any licence any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Authority but shall—
  - (a) if the licence is for the provision of a service for any area or locality in Great Britain, be paid into the Consolidated Fund of the United Kingdom,
  - (b) if the licence is for the provision of a service for any area or locality in Northern Ireland, be paid into the Consolidated Fund of Northern Ireland, or
  - (c) in any other case, be paid into whichever of those Funds the Authority consider appropriate or into both of those Funds in such proportions as the Authority consider appropriate.
- (2) The amounts referred to in subsection (1) are amounts payable by virtue of any of the following provisions—
  - section 53(5);
  - section 55(1);
  - section 59(1);
  - section 62(1);
  - section 66(1).
- (3) Subsection (1) shall not be construed as applying to any amount which is required by the Authority for the making of an adjustment in respect of an overpayment made by any person.

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- (4) Any amount payable by any person to the Authority under or by virtue of this Part shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of any licence under this Part, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (5) The Authority shall, in respect of each financial year, prepare an account showing—
- (a) all such amounts falling within subsection (1) as have been received by them, and
  - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,
- and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

## 72 Interpretation of Part II.

- (1) In this Part (unless the context otherwise requires)—
- “ancillary service” has the meaning given by section 63(2);
  - “the Authority” means the Radio Authority;
  - “digital additional service” has the meaning given by section 63(1), and “digital additional services licence” means a licence to provide such services;
  - “digital sound programme service” has the meaning given by section 40(5), and “digital sound programme licence” means a licence to provide such services;
  - “independent national broadcaster” has the meaning given by section 41(1);
  - “licence” means a licence under this Part, and “licensed” shall be construed accordingly;
  - “local digital sound programme service” and “national digital sound programme service” shall be construed in accordance with section 60(1) and “local digital sound programme licence” and “national digital sound programme licence” mean a licence to provide local digital sound programme services and a licence to provide national digital sound programme services respectively;
  - “local radio multiplex service” and “national radio multiplex service” shall be construed in accordance with section 40(4), and “local radio multiplex licence” and “national radio multiplex licence” mean a licence to provide a local radio multiplex service and a licence to provide a national radio multiplex service respectively;
  - “radio multiplex service” has the meaning given by section 40(1);
  - “simulcast radio service” has the meaning given by section 41(2);
  - “technical service” has the meaning given by section 63(3).
- (2) Any reference in this Part to an area in the United Kingdom does not include an area which comprises or includes the whole of England; and nothing in this Part shall be read as precluding a local radio multiplex service from being provided for an area or locality that is to any extent comprised in the area or locality for which another local radio multiplex service is to be provided.

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- (3) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

## PART III

### AMENDMENTS OF THE BROADCASTING ACT 1990

#### *Restrictions on holding of licences*

#### **73 Restrictions on holding of licences.**

Schedule 2 (which makes amendments of the 1990 Act relating to restrictions on the holding of licences under that Act or under Part I or II) shall have effect.

#### **Commencement Information**

- I3** *S. 73* wholly in force at 1.4.1997; *s. 73* in force for certain purposes at 24.7.1996 see *s. 149(1)*; *s. 73* in force at 1.4.1997 insofar as not already in force by *S.I. 1997/1005, art. 4*

#### *Regional Channel 3 services*

#### **74 Provision of news programmes by holders of regional Channel 3 licences.**

- (1) With respect to the broadcasting of news programmes on and after 1st January 1998, section 31 of the 1990 Act (provision of news on Channels 3 and 5) is amended as follows.
- (2) In subsection (2)—
- (a) at the beginning there is inserted “ For the purpose of securing the nationwide broadcast, by holders of regional Channel 3 licences (taken together), of news programmes which are able to compete effectively with other news programmes broadcast nationwide in the United Kingdom, ”,
  - (b) for “a nominated news provider” there is substituted “ the appointed news provider ”, and
  - (c) in paragraph (b), for “the same nominated” there is substituted “ the appointed ”.
- (3) For subsection (3) there is substituted—
- “(3) In subsection (2) “appointed news provider” means, subject to subsection (4), the body corporate for the time being appointed for the purposes of subsection (2), from among the bodies corporate nominated by the Commission under section 32, in accordance with conditions included by virtue of section 31A in regional Channel 3 licences.

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- (4) A body corporate ceases by virtue of this subsection to be the appointed news provider if its nomination is terminated by the Commission under any provision of section 32.”

## **75 Appointment of news provider by holders of regional Channel 3 licences.**

- (1) After section 31 of the 1990 Act there is inserted—

### **“31A Appointment of news provider by holders of regional Channel 3 licences.**

A regional Channel 3 licence shall include conditions requiring the holder of the licence to do all that he can to ensure—

- (a) that arrangements are made between all holders of regional Channel 3 licences (“the relevant licence holders”) for the appointment by them, from among the bodies corporate nominated by the Commission under section 32, and on such terms as the relevant licence holders may agree, of a single body corporate to be the appointed news provider for the purposes of section 31(2), and
- (b) that, so long as he provides his licensed service, an appointment for the purposes of section 31(2) is in force.”
- (2) The Independent Television Commission may not include in pursuance of section 31A of the 1990 Act any condition in a regional Channel 3 licence (within the meaning of Part I of the 1990 Act) which would require an appointment for the purposes of section 31(2) of that Act (as amended by this Act) to take effect before 1st January 1998.

## **76 Nomination by Commission for purposes of section 31(2) of Broadcasting Act 1990.**

- (1) Section 32 of the 1990 Act (nomination of bodies to provide news for regional Channel 3 services) is amended in accordance with subsections (2) to (5).
- (2) For subsections (1) to (6) there is substituted—

“(1) With a view to enabling them to nominate bodies corporate as eligible for appointment for the purposes of section 31(2), the Commission shall invite bodies appearing to them to be qualified for nomination to make applications to be so nominated.

(2) Where a body corporate—

(a) applies to the Commission (whether in pursuance of any such invitation or not) to be nominated under this section as a nominated news provider, and

(b) appears to the Commission to be qualified for nomination, the Commission shall so nominate that body.

(3) Subject to subsection (5), any nomination made by the Commission under this section shall remain in force for a period of ten years, and at the end of that period may be renewed by the Commission for a further period of ten years.

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- (4) Where the Commission are notified by the holders of licences to provide regional Channel 3 services that the appointment of the appointed news provider is due to expire, or to be renewed or terminated in accordance with the terms of the appointment, the Commission shall review the qualification for nomination of all nominated news providers (including the appointed news provider).
- (5) If on any such review it appears to the Commission that a body is no longer qualified for nomination they shall (subject to subsection (6)) by notice terminate that body's nomination.
- (6) The Commission shall not terminate a body's nomination under subsection (5) unless they have given the body a reasonable opportunity of making representations to them about the proposed termination."
- (3) In subsection (9), paragraph (b) is omitted.
- (4) In subsection (12), for the words from "appearing", where second occurring, onwards there is substituted "which—
  - (a) in their opinion is or, if appointed, would be effectively equipped and adequately financed to provide high quality news programmes for broadcasting in regional Channel 3 services; and
  - (b) appears to them not to be disqualified for being nominated under this section by virtue of this subsection."
- (5) In subsection (13)—
  - (a) in paragraph (b), after "section", where second occurring, there is inserted "as eligible for appointment", and
  - (b) after paragraph (b) there is inserted—
    - "and
    - (c) references to the appointed news provider are references to the person for the time being appointed for the purposes of section 31(2) under the arrangements referred to in section 31A(a)."
- (6) Subsections (2), (4) and (5) do not affect the application of section 32 of the 1990 Act before 1st January 1998 in relation to nomination for the purposes of section 31(2) of that Act as originally enacted.

**77 Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.**

- (1) After section 194 of the 1990 Act there is inserted—

**"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

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- 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>M9</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).
- (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.”

<sup>F12</sup>(2) .....

#### Textual Amendments

**F12** S. 77(2) repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 21, Sch. 14 Pt. I (with s. 73); S.I. 2000/344, art. 2

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### Marginal Citations

M9 1976 c. 34.

## 78 Variation of regional Channel 3 licence following change of control.

(1) After section 21 of the 1990 Act there is inserted—

### “21A Variation of regional Channel 3 licence following change of control.

- (1) Any regional Channel 3 licence granted to a body corporate after the commencement of this section shall include—
- (a) a condition requiring the body to give the Commission 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 licence holder to provide the Commission, 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 this section.
- (2) Subsections (3) and (4) have effect where—
- (a) in pursuance of a condition in a regional Channel 3 licence the Commission receive notice of any proposals that may give rise to a relevant change of control, or
  - (b) a relevant change of control takes place in relation to a body corporate which holds a regional Channel 3 licence (whether or not that change has been previously notified to the Commission).
- (3) If it appears to the Commission that the relevant change of control is or would be prejudicial to one or more of the following matters, namely—
- (a) the quality or range of regional programmes included in the service,
  - (b) the quality or range of other programmes included in the service which contribute to the regional character of the service, or
  - (c) the quality or range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1),
- then, with a view to ensuring that the relevant change of control is not prejudicial to any of those matters, the Commission shall vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of those matters as they consider appropriate.
- (4) If it appears to the Commission that, having regard to the effect, or likely effect, of the relevant change of control on—
- (a) the time given, in the programmes included in the service—
    - (i) to regional programmes, or
    - (ii) to programmes of the kind mentioned in subsection (3)(b),
  - (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided,
  - (c) the extent of the use in connection with the service—



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- (i) of offices or studios situated within the area for which the service is provided, or
- (ii) of the services of persons employed (whether by the licence holder or any other person) within that area, or
- (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area,

the relevant change of control is or would be prejudicial to the regional character of the service, the Commission may vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of the matters specified in paragraphs (a), (b), (c) and (d) as they consider appropriate.

- (5) Subject to subsection (6), any new or varied condition imposed under subsection (3) or (4) in relation to any matter specified in that subsection may be more onerous than any existing conditions relating 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.
- (6) The Commission may not under subsection (3) or (4) 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 Commission 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 Commission exercise their powers under subsection (3) or (4).
- (7) The Commission shall not serve a notice on any body under subsection (3) or (4) unless they have given it a reasonable opportunity of making representations to them about the variation.
- (8) Where, in a case falling within subsection (2)(a), a notice under subsection (3) or (4) varying a licence is served before the change to which it relates takes place, the variation shall not take effect until the change takes place.
- (9) In this section—

“regional programme”, in relation to any regional Channel 3 service, means any programme (including a news programme) which is of particular interest—

- (a) to persons living within the area for which the service is provided,
- (b) to persons living within any part of that area, or
- (c) to particular communities living within that area;

“relevant change of control” means a change in the persons having control over—

- (a) the body holding the licence, or

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(b) any body which is connected with that body and appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service.”

(2) Any regional Channel 3 licence (within the meaning of Part I of the 1990 Act) granted before the commencement of this section shall, as from that commencement, be taken to include the conditions referred to in section 21A(1)(a) and (b) of the 1990 Act.

**79 Powers of Commission in relation to modification or replacement of networking arrangements.**

(1) Section 39 of the 1990 Act (networking arrangements between holders of regional Channel 3 licences) is amended as follows.

(2) After subsection (9) there is inserted—

“(9A) The matters to which the Commission shall have regard in deciding whether to approve any arrangements or modification under subsection (4) or (8) include the likely effect of the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, on the ability of the holders of regional Channel 3 licences to maintain the quality and range—

- (a) of the regional programmes (as defined by section 21A(9)) included in each regional Channel 3 service, and
- (b) of the other programmes included in each service which contribute to the regional character of the service.”

(3) For subsection (10) there is substituted—

“(10) Without prejudice to the generality of their power to refuse to approve any arrangements or modification under subsection (4) or (8), the Commission shall refuse to do so if—

- (a) they are not satisfied that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be appropriate for the purpose mentioned in subsection (1), or
- (b) it appears to them that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be likely to prejudice the ability of the holder of any regional Channel 3 licence to comply with—
  - (i) any condition imposed in pursuance of section 33(1), for the purpose of securing the implementation of proposals relating to the matters specified in section 16(2)(c), or
  - (ii) any condition imposed in pursuance of subsection (3) of section 21A in relation to the matters specified in paragraph (a) of that subsection.”

*Channel 4 and S4C*

**80 Funding of Sianel Pedwar Cymru.**

(1) For section 61 of the 1990 Act there is substituted—

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#### **“61 Funding of Welsh Authority.**

- (1) The Secretary of State shall, in the year 1998 and in each subsequent year, pay to the Welsh Authority the prescribed amount as increased by the appropriate percentage.
  - (2) In this section “the prescribed amount” means the 1997 amount or such amount as may from time to time be prescribed under subsection (4).
  - (3) In this section “the 1997 amount” means the amount paid by the Secretary of State to the Welsh Authority by way of interim payment for the year 1997 (under this section as originally enacted).
  - (4) The Secretary of State may, if he is satisfied that it is appropriate to do so having regard to the cost to the Welsh Authority of transmitting S4C and the service referred to in section 57(1A)(a), by order provide that the prescribed amount is to be an amount which is greater than the 1997 amount and is specified in the order.
  - (5) Before making an order under subsection (4) the Secretary of State shall consult the Welsh Authority.
  - (6) In this section “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 November 1996, 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” has the same meaning as in section 19(10).
  - (7) Any sums required by the Secretary of State under this section shall be paid out of money provided by Parliament.
  - (8) An order shall not be made under subsection (4) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.”
- (2) In section 62 of the 1990 Act for “sections 26 and 61” there is substituted “ section 26 ”.
- (3) Subsections (1) and (2) shall not have effect in relation to payments for any year before 1998.
- (4) No payment shall be made to or by the Welsh Authority under subsection (3) or (4) of section 61 of the 1990 Act (as originally enacted) for the year 1997; and in this subsection “the Welsh Authority” has the same meaning as in the 1990 Act.

#### **81 Public service fund of Sianel Pedwar Cymru.**

- (1) After section 61 of the 1990 Act there is inserted—

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### “61A Welsh Authority public service fund.

- (1) The Welsh Authority shall not exercise their powers under section 57(1A)(b) before such date (in this section referred to as “the notified date”) as they may notify to the Secretary of State for the purposes of this section.
  - (2) All amounts received by the Welsh Authority under section 61 on or after the notified date shall be kept by the Authority in a separate fund (in this section referred to as “the public service fund”) which may be applied only for the purposes of their functions under section 57(1) or (1A)(a).
  - (3) No S4C company shall receive any direct or indirect subsidy from the public service fund.
  - (4) The Welsh Authority shall secure that no television programme which has been wholly or partly financed out of the public service fund is included in a television programme service provided by an S4C company before it is first broadcast on S4C or in the service referred to in section 57(1A)(a).
  - (5) On the notified date—
    - (a) all the assets then held by the Welsh Authority other than cash, together with the appropriate proportion of any cash then held by them, shall be taken to be comprised in the public service fund, and
    - (b) the remainder of any cash then held by the Authority shall be taken to be comprised in a general fund.
  - (6) In subsection (5)(a) “the appropriate proportion” means the proportion which, in the last financial year in respect of which a statement of accounts has been prepared under paragraph 12(1) of Schedule 6 before the notified date, the total amount received by the Welsh Authority under section 61 bears to the total amount of its income from all sources.”
- (2) In paragraph 12 of Schedule 6 of the 1990 Act (accounts and audit) after subparagraph (1) there is inserted—
- “(1A) The statement of accounts must deal separately with the public service fund referred to in section 61A of this Act and with the general fund referred to in subsection (5)(b) of that section.”.

PROSPECTIVE

### <sup>F13</sup>82 **Multiplex revenue to be taken into account in connection with funding of Channel Four Television Corporation.**

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#### Textual Amendments

**F13** Ss. 82-84 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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### **83 Application of excess revenues of Channel Four Television Corporation.**

- (1) Section 27 of the 1990 Act (application of excess revenues of Channel Four Television Corporation) is amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (a), for “one half” there is substituted “ 50 per cent. ”, and
  - (b) in paragraph (b), for “the other half” there is substituted “ the remainder of the excess ”.
- (3) In subsection (3)—
  - (a) in paragraph (a), for “half” there is substituted “ 50 per cent. ”, and
  - (b) in paragraph (b), for “the other half” there is substituted “ the remainder of that amount ”.
- (4) After subsection (6) there is inserted—
  - “(7) The Secretary of State may by order—
    - (a) amend subsection (1)(a) by substituting for the percentage for the time being specified there a percentage specified in the order, which may be nil but must not be more than 50 per cent., and
    - (b) amend subsection (3)(a) by substituting for the percentage for the time being specified there a percentage specified in the order, which may be nil.
  - (8) An order shall not be made under subsection (7) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.”

### **84 Extension of powers of Channel Four Television Corporation and Sianel Pedwar Cymru.**

- (1) In section 24 of the 1990 Act (Channel 4 to be provided as licensed service) after subsection (4) there is inserted—
  - “(5) The Corporation shall also have power—
    - (a) (subject to and in accordance with Part I of the Broadcasting Act 1996) to arrange for the broadcasting of Channel 4 in digital form in any part of the United Kingdom as a qualifying service (within the meaning of that Part), and
    - (b) to establish qualifying companies, to purchase or otherwise acquire shares, stocks or other securities of qualifying companies and to assist any qualifying company.
  - (6) In subsection (5)(b) “qualifying company” means any company (whether incorporated under the law of the United Kingdom or of any other country) which is or will be wholly or mainly engaged in one or more of the following activities—
    - (a) the provision of one or more services which are licensed by the Commission or by the Radio Authority or which, if provided in the United Kingdom, would be required to be so licensed,
    - (b) activities incidental to such provision, and

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- (c) the holding of shares in any other company which is wholly or mainly engaged in such provision or in activities incidental to such provision.”
- (2) In paragraph 1 of Schedule 3 to the 1990 Act (status and capacity of Channel Four Television Corporation) after sub-paragraph (3) there is inserted—
  - “(4) Section 24(5)(b) of this Act shall not be taken to limit the Corporation’s power by virtue of sub-paragraph (3) to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under section 24(1) or (5)(a).”
- (3) In section 57 of the 1990 Act (functions and duties of Welsh Authority) after subsection (1) there is inserted—
  - “(1A) The Welsh Authority shall also have power—
    - (a) (subject to and in accordance with Part I of the Broadcasting Act 1996) to provide a further service as a qualifying service (within the meaning of that Part), and to arrange for the broadcasting of that service in digital form, and
    - (b) to establish qualifying companies, to purchase or otherwise acquire shares, stocks or other securities of qualifying companies and to assist any qualifying company.
  - (1B) In subsection (1A)(b) “qualifying company” means any company (whether incorporated under the law of the United Kingdom or of any other country) which is or will be wholly or mainly engaged in one or more of the following activities—
    - (a) the provision of one or more services which are licensed by the Commission or by the Radio Authority or which, if provided in the United Kingdom, would be required to be so licensed,
    - (b) activities incidental to such provision, and
    - (c) the holding of shares in any other company which is wholly or mainly engaged in such provision or in activities incidental to such provision.”
- (4) In paragraph 1 of Schedule 6 to the 1990 Act (status and capacity of Welsh Authority) after sub-paragraph (2) there is inserted—
  - “(3) Section 57(1A)(b) of this Act shall not be taken to limit the Authority’s power by virtue of sub-paragraph (2) to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under section 57(1) or (1A)(a).”

*Miscellaneous amendments relating to television broadcasting*

**85 Restricted television services.**

After section 42 of the 1990 Act there is inserted—

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## “CHAPTER IIA

### RESTRICTED SERVICES

#### **42A Restricted services.**

In this Part “restricted service” means a service which—

- (a) consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom, and
- (b) is provided on a frequency or frequencies assigned to the Commission under section 65.

#### **42B Licensing etc. of restricted services.**

- (1) An application for a licence to provide a restricted service shall be made in such manner as the Commission may determine, and shall be accompanied by such fee (if any) as the Commission may determine.
- (2) Subject to subsections (3) and (4), sections 40 to 42 shall apply in relation to such a licence as they apply in relation to a licence to provide a Channel 3 service.
- (3) In its application to a licence to provide a restricted service, section 41 shall have effect with the omission of subsection (2); and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section shall not exceed whichever is the greater of—
  - (a) £50,000, and
  - (b) the amount determined under subsection (4).
- (4) The amount referred to in subsection (3)(b) is—
  - (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);

and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).”

#### **86 Award of certain licences subject to conditions.**

- (1) After section 17 of the 1990 Act there is inserted—

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**“17A Award of Channel 3 licence subject to conditions.**

- (1) The Commission may, when awarding a Channel 3 licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
    - (a) any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and
    - (b) any information provided to them under section 15(3)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
  - (2) Where the Commission determine that any condition imposed by them in relation to a Channel 3 licence in pursuance of subsection (1) has not been satisfied, section 17 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
  - (3) Section 17 shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence.”
- (2) In section 51 of the 1990 Act (procedure to be followed by Commission in connection with consideration of applications for, and awarding of, licences to provide additional services), in subsection (3)—
    - (a) for “section 17” there is substituted “ sections 17 and 17A ”, and
    - (b) for “it applies” there is substituted “ they apply ”.
  - (3) After section 76 of the 1990 Act there is inserted—

**“76A Award of local delivery licence subject to conditions.**

- (1) The Commission may, when awarding a local delivery licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
  - (a) any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and
  - (b) any information provided to them under section 74(3)(d) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where the Commission determine that any condition imposed by them in relation to a local delivery licence in pursuance of subsection (1) has not been satisfied, section 76 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 76 shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under section 74(1) in respect of the grant of the licence.”



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## 87 Ancillary services.

Section 48 of the 1990 Act (additional services) is amended in paragraph (c) of subsection (3) by the addition after the words “their contents” of the words “or relate to the promotion or listing of such programmes”.

## 88 Enforcement of licences to provide non-domestic satellite services.

(1) Section 45 of the 1990 Act (licensing etc. of non-domestic satellite services) is amended as follows.

(2) In subsection (5), for “and” there is substituted “to”.

(3) In subsection (6), for “shall instead be £50,000” there is substituted—

“shall not exceed whichever is the greater of—

- (a) £50,000, and
- (b) the amount determined under subsection (6A).

(6A) The amount referred to in subsection (6)(b) is—

- (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
- (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);

and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).”

(4) Subsections (8) and (9) are omitted.

## 89 Power of Independent Television Commission to suspend licence to provide non-domestic satellite service.

After section 45 of the 1990 Act there is inserted—

### “45A Special power of revocation and suspension on certain grounds in case of licence to provide non-domestic satellite service.

(1) If the Commission are satisfied—

- (a) that the holder of a licence to provide a non-domestic 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 a condition included in the licence in pursuance of section 6(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).

(2) A notice under this subsection is a notice—

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- (a) stating that the Commission 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 Commission 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 Commission 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 Commission decide not to revoke the licence.
- (3) If the Commission, 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 42 (as applied by section 45(5)) shall not have effect in relation to the revocation of a licence in pursuance of a notice under subsection (1).”

## **90 Enforcement of licences to provide licensable programme services.**

- (1) Section 47 of the 1990 Act (licensing etc. of licensable programme services) is amended as follows.
- (2) In subsection (8), for “and” there is substituted “ to ”.
- (3) In subsection (9), for “shall instead be £50,000” there is substituted—
- “shall not exceed whichever is the greater of—
- (a) £50,000, and
  - (b) the amount determined under subsection (9A).
- (9A) The amount referred to in subsection (9)(b) is—
- (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);
- and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).”

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(4) Subsections (11) and (12) are omitted.

## 91 Certain delivery services to carry certain broadcasts.

(1) After section 78 of the 1990 Act there is inserted—

### **“78A Inclusion of certain services in local delivery service provided by digital means.**

- (1) Where the Commission are satisfied, in the case of a local delivery service by means of which one or more of the services specified in section 72(2) is delivered in digital form, that it would be appropriate, having regard to the extent of the use and proposed use of digital technology in the provision of the service, for the service to be treated as a digital local delivery service for the purposes of this section, they shall serve a notice to that effect on the holder of the licence to provide the service.
- (2) The Commission shall do all that they can to secure that, subject to subsection (3) and to any exceptions for which the Secretary of State, after consultation with the Commission, the BBC and the Welsh Authority, may by order provide, every digital local delivery service provided by any person in any area includes, by the reception and immediate re-transmission of the broadcasts—
  - (a) the programmes included in each relevant service, and
  - (b) if the area for which the local delivery service is provided falls wholly or partly in Wales, the programmes included in the appropriate Welsh service.
- (3) The Commission may exempt any digital local delivery service from the requirement to include any service (“the broadcast service”) if it appears to the Commission that, at the place where the holder of the licence to provide the local delivery service receives or would receive the broadcast service, the broadcast service is not capable of being received at a level satisfying such technical standards as the Commission may from time to time determine.
- (4) Where a relevant service provided for reception in an area for which a digital local delivery service is provided consists in the broadcasting for simultaneous reception of programmes contained in two or more programme schedules, then, so far as relating to that relevant service, the duty in subsection (2) shall be subject to the limitation in whichever of subsections (5) and (6) is appropriate.
- (5) Where the programmes contained in one of the programme schedules are broadcast for reception in a greater part of the area than the programmes contained in the other schedule or any of the other schedules, the duty in subsection (2) so far as so relating shall extend only to the programmes contained in the first-mentioned schedule.
- (6) Where subsection (5) does not apply, the duty in subsection (2) so far as so relating shall extend only to the programmes contained in such one of the programme schedules as the relevant broadcasting body may determine.

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- (7) For the purposes of this section Channel 3 shall be taken to be a single service consisting in the broadcasting for simultaneous reception of programmes contained in several programme schedules.
- (8) Each broadcaster shall provide any person providing a digital local delivery service with such assistance as he may reasonably require in relation to the technical arrangements for the re-transmission in pursuance of this section of the broadcasts of that broadcaster.
- (9) In this section—
- “the appropriate Welsh service” means the service referred to in section 57(1A)(a) or, if no such service is being broadcast, S4C;
- “broadcaster” means the Welsh Authority or any person providing a relevant service;
- “digital local delivery service” means any local delivery service in respect of which the Commission have given a notice under subsection (1);
- “the relevant broadcasting body” means—
- (a) in relation to any service provided by the BBC, the BBC, and
- (b) in relation to any service licensed by the Commission, the Commission;
- “relevant service” means any of the following services—
- (a) Channel 3, Channel 4 and Channel 5,
- (b) the teletext service referred to in section 49(2), and
- (c) the television broadcasting services and teletext service provided by the BBC.
- (10) Expressions used in subsections (7) and (9) and in Part I of this Act have the same meaning in those provisions as in that Part.
- (11) An order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In Part III of Schedule 12 to the 1990 Act (transitional provisions relating to existing cable services), for paragraph 4 there is substituted—
- “4
- (1) The Commission shall do all that they can to secure that, subject to subparagraph (2) and to any exceptions for which the Secretary of State, after consultation with the Commission, the BBC and the Welsh Authority, may by order provide, every diffusion service provided by any person in any area under a relevant licence includes, by the reception and immediate re-transmission of the broadcasts, the programmes included in each relevant service provided for reception in that area.
- (2) The Commission may exempt any diffusion service from the requirement to include any relevant service if it appears to the Commission that, at the place where the holder of the licence to provide the diffusion service receives or would receive the relevant service, the relevant service is not capable of being received at a level satisfying such technical standards as the Commission may from time to time determine.

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- (3) Where a relevant service provided for reception in an area for which a diffusion service is provided consists in the broadcasting for simultaneous reception of programmes contained in two or more programme schedules, then, so far as relating to that relevant service, the duty in sub-paragraph (1) shall be subject to the limitation in whichever of sub-paragraphs (4) and (5) is appropriate.
  - (4) Where the programmes contained in one of the programme schedules are broadcast for reception in a greater part of the area than the programmes contained in the other schedule or any of the other schedules, the duty in sub-paragraph (1) so far as so relating shall extend only to the programmes contained in the first-mentioned schedule.
  - (5) Where sub-paragraph (4) does not apply, the duty in sub-paragraph (1) so far as so relating shall extend only to the programmes contained in such one of the programme schedules as the relevant broadcasting body may determine.
  - (6) For the purposes of this paragraph Channel 3 shall be taken to be a single service consisting in the broadcasting for simultaneous reception of programmes contained in several programme schedules.
  - (7) Each person providing a relevant service (“the broadcaster”) shall provide any person providing a diffusion service with such assistance as he may reasonably require in relation to the technical arrangements for the re-transmission in pursuance of this paragraph of the broadcasts of that broadcaster.
  - (8) In this paragraph—
    - “the relevant broadcasting body” means—
      - (a) in relation to any service provided by the BBC, the BBC, and
      - (b) in relation to any service licensed by the Commission, the Commission;
    - “relevant service” means any of the following services—
      - (a) Channel 3, Channel 4 and S4C,
      - (b) the teletext service referred to in section 49(2) of this Act, and
      - (c) the two television broadcasting services provided by the BBC on the passing of the Broadcasting Act 1996 and the teletext service provided by the BBC at that time.
  - (9) Expressions used in sub-paragraphs (6) and (8) and in Part I of this Act have the same meaning in those sub-paragraphs as in that Part.
  - (10) An order under sub-paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 4A (1) Where the Commission are satisfied, in the case of any diffusion service which is provided under a relevant licence and by means of which one or more of the services specified in section 72(2) of this Act is delivered in digital form, that it would be appropriate, having regard to the extent

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of the use and proposed use of digital technology in the provision of the service, for the service to be treated as a digital diffusion service for the purposes of this paragraph, they shall serve a notice to that effect on the holder of the licence to provide the service; and in this paragraph “digital diffusion service” means a diffusion service in respect of which such a notice has been served.

- (2) Subsections (2) to (8) of section 78A of this Act shall have effect in relation to a digital diffusion service as they have effect in relation to a digital local delivery service (within the meaning of that section); and nothing in paragraph 4 shall have effect in relation to a digital diffusion service.”

### *Sound broadcasting*

## **92 Renewal of licences to provide national radio services.**

After section 103 of the 1990 Act there is inserted—

### **“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 done all that it would in the circumstances be reasonable

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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)(ii) 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

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- simulcast radio service to be broadcast in digital form throughout the period beginning with the date determined under subsection (6)(a) and ending with the date on which the licence (as renewed) is to expire; and
- (d) the reference in section 111(4) to the end of the period for which a national licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.
- (10) Subsections (6)(a) and (9)(c) do not prejudice the generality of section 48(3)(b) of the Broadcasting Act 1996 (power to vary national licence to include conditions relating to digital broadcasting).
- (11) In this section—
- “simulcast radio service” has the same meaning as in Part II of the Broadcasting Act 1996;
- “the relevant date”, in relation to a national licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 98(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the national service formerly provided under that licence.”

### 93 **Variation of local radio licence following change of control.**

After section 106 of the 1990 Act there is inserted—

#### **“106A Variation of local licence following change of control.**

- (1) Any local licence granted to a body corporate before the commencement of this section shall be taken to include—
- (a) a condition requiring the body to give the Authority advance notice of any proposals known to the body that may give rise to a relevant change of control, and
- (b) a condition requiring the body to provide the Authority, in such manner and at such times as they may reasonably require, with such information as they may require for the purposes of exercising their functions under subsection (3).
- (2) Subsection (3) applies in relation to any local licence which—
- (a) was granted before the commencement of this section,
- (b) is held by a body corporate, and
- (c) has not previously been varied under that subsection.
- (3) Where, in relation to any local licence to which this subsection applies—
- (a) the Authority receive notice, in pursuance of a condition imposed under subsection (1) or section 88(2)(d), of any proposals that may give rise to a relevant change of control, or
- (b) a relevant change of control takes place (whether or not that change has been previously notified to the Authority),
- the Authority may vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions as they consider appropriate for the purpose of ensuring that the character of the local service is maintained after the relevant change of control.



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- (4) Subject to subsection (5), any new or varied condition imposed under subsection (3) in relation to any matter may be more onerous than any existing condition imposed under section 106(1) in relation to that matter; and in this subsection “existing condition” means a condition of the licence as it has effect, or had effect, before the relevant change of control.
- (5) The Authority may not under subsection (3) include any new or varied condition in a licence unless the new condition or the condition as varied is one which (with any necessary modifications) would have been satisfied by the licence holder—
  - (a) during the three months immediately before the relevant date, or
  - (b) if the Authority consider that the performance of the licence holder during that period is not typical of its performance during the twelve months before the relevant date, during such other period of three months during those twelve months as they may notify in writing to the licence holder;and for the purposes of this subsection “the relevant date” is the date of the relevant change of control or, if earlier, the date on which the Authority exercise their powers under subsection (3).
- (6) The Authority shall not serve a notice on any body under subsection (3) unless they have given it a reasonable opportunity of making representations to them about the variation.
- (7) Where, in any case falling within paragraph (a) of subsection (3), a notice under that subsection is served before the change to which it relates takes place, the variation shall not take effect until the change to which it relates takes place.
- (8) The power in subsection (1) of section 106 to vary conditions imposed under that subsection includes power to vary conditions imposed under subsection (3).
- (9) In this section “relevant change of control” means a change in the persons having control over the body holding the licence.”

#### **94 Renewal of licences to provide local radio services.**

- (1) After section 104 of the 1990 Act there is inserted—

##### **“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.

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

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- (b) specify a fee payable to the Authority in respect of the renewal.
- (11) Where the Authority have granted a person's application under this section they shall formally renew his licence as soon afterwards as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (10)(a), and
  - (b) the renewal fee specified by them under subsection (10)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (12) Where the Authority renew a licence under this section they shall include in the licence as renewed a condition requiring the licence holder to do all that he can to ensure that the nominated local digital sound programme service is broadcast by means of the nominated local radio multiplex service throughout the period beginning with whichever is the later of—
- (a) the date on which the licence would expire if not renewed, and
  - (b) any date determined by them under subsection (10)(a),
- and ending with the date on which the licence (as renewed) is to expire.
- (13) In this section—
- (a) “local digital sound programme service” has the same meaning as in Part II of the Broadcasting Act 1996;
  - (b) “nominated” means nominated by the applicant under subsection (4);
  - (c) “relevant date”, in relation to a local licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 104(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the local service formerly provided under that licence; and
  - (d) “relevant local radio multiplex service”, in relation to a local licence, means a local radio multiplex service (within the meaning of Part II of the Broadcasting Act 1996) with a coverage area which to a significant extent includes the coverage area of the local service provided under the local licence; and for this purpose “coverage area”, in relation to a service, has the meaning given by paragraph 3A of Part I of Schedule 2.

#### **104B 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—

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- (a) stating that the Authority propose to grant a further licence to provide a specified local service,
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided,
  - (c) inviting declarations of intent to apply for a licence to provide the service,
  - (d) specifying the closing date for such declarations, and
  - (e) specifying—
    - (i) the application fee payable on any declaration made in pursuance of the notice, and
    - (ii) a deposit of such amount as the Authority may think fit.
- (3) A declaration of intent made in pursuance of a notice under subsection (2) must be in writing and accompanied by the application fee and deposit specified under subsection (2)(e)(i) and (ii).
- (4) Where the Authority receive a declaration of intent in accordance with the provisions of this section from a person other than the licence holder in relation to the service in question, they shall—
- (a) publish a notice under section 104(1),
  - (b) specify—
    - (i) in relation to persons who have made a declaration of intent in accordance with the provisions of this section, no further application fee, and
    - (ii) in relation to all other applicants, an application fee of the same amount as the fee referred to in subsection (2)(e)(i), and
  - (c) repay the deposit referred to in subsection (2)(e)(ii) to every person—
    - (i) who has made a declaration of intent in accordance with the provisions of this section, and
    - (ii) who duly submits an application in pursuance of the notice referred to in paragraph (a).
- (5) Where the Authority receive a declaration of intent in accordance with the provisions of this section from the licence holder in relation to the service in question, and no such declaration from any other person, they shall—
- (a) invite the licence holder to apply for the licence in such manner as they may determine (but without requiring any further application fee), and
  - (b) on receiving an application duly made by him, repay to him the deposit referred to in subsection (2)(e)(ii).
- (6) The Secretary of State may by order amend subsection (1) by removing any of the categories of local service for the time being specified in that subsection, or by 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.”
- (2) In section 104 of the 1990 Act (applications for licences other than national licences), subsections (5) and (6)(a) shall cease to have effect.

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

- C8** S. 94 extended to Guernsey (12.5.1999) by S.I. 1999/1314, art. 2  
S. 94 extended to Jersey (12.5.1999) by S.I. 1999/1315, art. 2

**95 Financing of Gaelic sound programmes.**

- (1) Section 183 of the 1990 Act (financing of television programmes in Gaelic out of Gaelic Television Fund) is amended as mentioned in subsections (2) to (6).
- (2) In subsection (2), for “Gaelic Television Fund” there is substituted “ Gaelic Broadcasting Fund ”.
- (3) In subsection (3), for “Comataidh Telebhisein Gaidhlig (the Gaelic Television Committee)” there is substituted “ Comataidh Craolaidh Gaidhlig (the Gaelic Broadcasting Committee) ”.
- (4) After subsection (3) there is inserted—

“(3A) Before making any appointment under subsection (3) the Commission shall consult the Radio Authority.”.
- (5) In subsection (4), in each of paragraphs (a)(i) and (b), after “television” there is inserted “ and sound ”.
- (6) In subsection (6)—
  - (a) after “will” there is inserted —

“(a”;

and
  - (b) for “but” there is substituted—

“(b) widen the range and improve the quality of sound programmes in Gaelic that are broadcast for reception in Scotland;

but ”.
- (7) In Part II of Schedule 1 to the<sup>M10</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there is inserted at the appropriate place—

“Comataidh Craolaidh Gaidhlig”.

**Marginal Citations**

- M10** 1975 c. 24.

**96 Power of Radio Authority to suspend licence to provide satellite service.**

After section 111A of the 1990 Act there is inserted—

**“111B Power to suspend licence to provide satellite service.**

- (1) If the Authority are satisfied—

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- (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).
- (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).”

## PART IV

### SPORTING AND OTHER EVENTS OF NATIONAL INTEREST

#### 97 **Listed events.**

- (1) For the purposes of this Part, a listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State for the purposes of this Part.
- (2) The Secretary of State shall not at any time draw up, revise or cease to maintain such a list as is mentioned in subsection (1) unless he has first consulted—
  - (a) the BBC,
  - (b) the Welsh Authority,
  - (c) the Commission, and

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- (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired;
- and for the purposes of this subsection a relevant event is a sporting or other event of national interest which the Secretary of State proposes to include in, or omit from, the list.
- (3) As soon as he has drawn up or revised such a list as is mentioned in subsection (1), the Secretary of State shall publish the list in such manner as he considers appropriate for bringing it to the attention of—
- (a) the persons mentioned in subsection (2), and
  - (b) every person who is the holder of a licence granted by the Commission under Part I of the 1990 Act or a digital programme licence granted by them under Part I of this Act.
- (4) In this section “national interest” includes interest within England, Scotland, Wales or Northern Ireland.
- (5) The addition of any relevant event to such a list as is mentioned in subsection (1) shall not affect—
- (a) the validity of any contract entered into before the date on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed addition, or
  - (b) the exercise of any rights acquired under such a contract.
- (6) The list drawn up by the Secretary of State for the purposes of section 182 of the 1990 Act, as that list is in force immediately before the commencement of this section, shall be taken to have been drawn up for the purposes of this Part.

#### [<sup>F14</sup>98] **Categories of service.**

- (1) For the purposes of this Part, television programme services and EEA satellite services shall be divided into two categories as follows—
- (a) those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions, and
  - (b) all other television programme services and EEA satellite services.
- (2) In this section “the qualifying conditions”, in relation to a service, means the conditions—
- (a) that the service is provided without any consideration being required for reception of the service, and
  - (b) that the service is received by at least 95 per cent. of the population of the United Kingdom.
- (3) There shall be disregarded for the purposes of subsection (2)(a) any fee payable in respect of a television licence, as defined by section 1(7) of the Wireless Telegraphy Act 1949.
- (4) The condition in subsection (2)(b)
- (a) is to be taken to be satisfied in relation to a regional Channel 3 service if it is satisfied in relation to Channel 3 as a whole, and
  - (b) is to be taken to be satisfied in relation to Channel 4 if it is satisfied in relation to Channel 4 and S4C taken together.

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- (5) The Commission shall from time to time publish a list of the television programme services and EEA satellite services which appear to them to satisfy the qualifying conditions.
- (6) In this section “EEA satellite service” means any service which—
- (a) consists in the transmission for general reception of television programmes by satellite, and
  - (b) is provided by a person who for the purposes of Council Directive [89/552/EEC](#) is under the jurisdiction of an EEA State other than the United Kingdom.]

#### Textual Amendments

**F14** S. 98 substituted (19.1.2000) by [S.I. 2000/54, reg. 3, Sch. para. 1](#) (with [reg. 4\(2\)](#))

### 99 Contract for exclusive right to televise listed event to be void.

- (1) Any contract entered into after the commencement of this section under which a television programme provider acquires rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or in any area of the United Kingdom, shall be void so far as it purports, in relation to the whole or any part of the event or in relation to reception in the United Kingdom or any area of the United Kingdom, to grant those rights exclusively to any one television programme provider.
- (2) In this Part “television programme provider” means the BBC, the Welsh Authority or any person who is the holder of any licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act.
- (3) For the purposes of this section rights to televise the whole or any part of an event live for reception in any area granted to a television programme provider are granted exclusively if the person granting them—
- <sup>F15</sup>(a) has not granted any right to televise the whole or, as the case may be, that part of the event live for reception in that area to any other television programme provider nor to any broadcaster who for the purposes of Council Directive [89/552/EEC](#) is under the jurisdiction of an EEA State other than the United Kingdom, and]
  - (b) is precluded by the terms of the contract from doing so.

#### Textual Amendments

**F15** S. 99(3)(a) substituted (19.1.2000) by [S.I. 2000/54, reg. 3, Sch. para. 2](#)

### 100 Contract for televising listed event must specify category of service.

- <sup>F16</sup>(1) Any contract entered into after the commencement of this section shall be void so far as it purports to grant to a television programme provider rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or any area of the United Kingdom, unless the contract complies with subsection (2).
- (2) A contract complies with this subsection if the terms of the contract allow the television programme provider to include the live coverage of the listed event—



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- (a) only in a television programme service falling within paragraph (a) of subsection (1) of section 98, or
- (b) only in a television programme service falling within paragraph (b) of that subsection.

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**Textual Amendments**

**F16** S. 100(1) restricted (19.1.2000) by [S.I. 2000/54, reg. 4\(1\)](#)

**101 Restriction on televising of listed event.**

- (1) A [<sup>F17</sup>television programme provider] providing a service falling within either of the categories set out in subsection (1) of section 98 (“the first service”) for reception in the United Kingdom or in any area of the United Kingdom shall not, without the previous consent of the Commission, include in that service live coverage of the whole or any part of a listed event unless—
  - (a) another person, who is providing a service falling within the other category set out in that subsection (“the second service”), has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event, and
  - (b) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided.
- (2) The Commission may revoke any consent given by them under subsection (1).
- (3) Failure to comply with subsection (1) shall not affect the validity of any contract.
- (4) Subsection (1) shall not have effect where the television programme provider providing the first service is exercising rights acquired before the commencement of this section.

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**Textual Amendments**

**F17** Words in s. 101(1) substituted (19.1.2000) by [S.I. 2000/54, reg. 3, Sch. para. 3](#) (with [reg. 4\(2\)](#))

**[<sup>F18</sup>101A Designated events in relation to other EEA States.**

For the purposes of this Part, a sporting or other event is a designated event, in relation to an EEA State other than the United Kingdom, if—

- (a) that State has designated the event in accordance with Article 3a(1) of Council Directive [89/552/EEC](#) as being of major importance to its society, and
- (b) the designation forms part of measures—
  - (i) which have been notified by that State to the European Commission for the purposes of Article 3a(2) of that Directive, and
  - (ii) notice of which has been published by the European Commission in the Official Journal of the Communities.]

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#### Textual Amendments

**F18** Ss. 101A-101B inserted (19.1.2000) by *S.I. 2000/54, reg. 3, Sch. para. 4*

#### <sup>F19</sup> **101B Restriction on televising of an event designated by other EEA State.**

- (1) A television programme provider shall not, without the previous consent of the Commission, exercise rights to televise the whole or part of an event which is a designated event, in relation to an EEA State other than the United Kingdom, for reception in that EEA State or any area of that EEA State, where a substantial proportion of the public in that EEA State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State in accordance with Article 3a(1) of Council Directive [89/552/EEC](#).
- (2) The Commission may revoke any consent given by them under subsection (1).
- (3) Failure to comply with subsection (1) shall not affect the validity of any contract.
- (4) Subsection (1) shall not have effect where the rights were acquired before the day on which the event became a designated event.

#### Textual Amendments

**F19** Ss. 101A-101B inserted (19.1.2000) by *S.I. 2000/54, reg. 3, Sch. para. 4*

#### **102 Power of Commission to impose penalty.**

- (1) If the Commission—
  - (a) are satisfied that the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has failed to comply with subsection (1) of section 101 [<sup>F20</sup>or subsection (1) of section 101B], and
  - (b) are not satisfied that in all the circumstances it would be unreasonable to expect him to have complied with that subsection,
 they may require him to pay, within a specified period, a specified financial penalty to the Commission.
- (2) If the Commission are satisfied that, in connection with an application for consent under subsection (1) of section 101 [<sup>F21</sup>or subsection (1) of section 101B], the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has—
  - (a) provided them with information which was false in a material particular, or
  - (b) withheld any material information with the intention of causing the Commission to be misled,
 they may require him to pay, within a specified period, a specified financial penalty to the Commission.

[<sup>F22</sup>(2A) Before requiring any person to pay a financial penalty under subsection (1) on the ground that he has failed to comply with subsection (1) of section 101B, the Commission shall consult such persons (who may include competent authorities in other EEA States) as appear to the Commission to be appropriate.]

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- (3) The amount of any financial penalty imposed on any person under subsection (1) or (2) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.
- (4) In subsection (3)—
  - (a) “the relevant consideration” means an amount determined by the Commission as representing so much of any consideration paid by the person on whom the penalty is being imposed as is attributable to the acquisition of the rights to televise the event in question, and
  - (b) “the prescribed multiplier” means such number as the Secretary of State may from time to time by order prescribe.
- (5) An order under subsection (4)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Where the Commission receive any amount payable to them by virtue of subsection (1) or (2), that amount shall not form part of the revenues of the Commission but shall be paid into the Consolidated Fund.
- (7) Any amount payable by any person to the Commission by virtue of subsection (1) or (2) shall be recoverable by them as a debt due to them from that person.

#### Textual Amendments

- F20** Words in s. 102(1)(a) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 5(2)  
**F21** Words in S. 102(2) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 5(3)  
**F22** S. 102(2A) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 5(4)

### 103 Report to Secretary of State.

- (1) If the Commission—
  - (a) are satisfied that a broadcasting body has failed to comply with subsection (1) of section 101 [<sup>F23</sup>or subsection (1) of section 101B], and
  - (b) are not satisfied that in all the circumstances it would be unreasonable to expect the body to have complied with that subsection,they shall make a report on the matter to the Secretary of State.
- (2) If the Commission are satisfied that, in connection with an application for consent under subsection (1) of section 101 [<sup>F24</sup>or subsection (1) of section 101B], a broadcasting body has—
  - (a) provided them with information which was false in a material particular, or
  - (b) withheld any material information with the intention of causing the Commission to be misled,

they shall make a report on the matter to the Secretary of State.

[<sup>F25</sup>(2A) Before reporting to the Secretary of State that a broadcasting body has failed to comply with subsection (1) of section 101B, the Commission shall consult such persons (who may include competent authorities in other EEA States) as appear to the Commission to be appropriate.]

- (3) In this section “broadcasting body” means the BBC or the Welsh Authority.

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#### Textual Amendments

- F23** Words in s. 103(1)(a) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 6(2)  
**F24** Words in s. 103(2) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 6(3)  
**F25** S. 103(2A) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 6(4)

### 104 Code of guidance.

- (1) The Commission shall draw up, and may from time to time review, a code—
- (a) specifying the circumstances in which the televising of listed events generally, or of a particular listed event, is, or is not, to be treated as live for the purposes of <sup>F26</sup>sections 99, 100 and 101], and
  - (b) giving guidance as to the matters which they will take into account in determining—
    - (i) whether to give or revoke their consent under section 101(1) <sup>F27</sup>or section 101B(1)], or
    - (ii) for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1) <sup>F28</sup>or section 101B(1)].
- (2) In exercising their powers under this Part, the Commission shall have regard to the provisions of the code.
- (3) Before drawing up or revising the code the Commission shall consult such persons as appear to the Commission to be appropriate.
- (4) As soon as the Commission have drawn up or revised such a code, the Commission shall publish the code in such manner as they consider appropriate for bringing it to the attention of—
- (a) the BBC,
  - (b) the Welsh Authority,
  - (c) every person from whom the rights to televise a listed event may be acquired, and
  - (d) every person who is the holder of a licence granted by the Commission under Part I of the 1990 Act or a digital programme licence granted by them under Part I of this Act.

#### Textual Amendments

- F26** Words in s. 104(1)(a) substituted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 7(a)  
**F27** Words in S. 104(1)(b)(i) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 7(b)  
**F28** Words in s. 104(1)(b)(ii) inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 7(b)

### <sup>F29</sup>104A Provision of information.

- (1) A television programme provider shall, at the request of the Commission, provide them with such information as the Commission consider appropriate regarding any contract which he has entered into which relates to an event which, in relation to an EEA State other than the United Kingdom, is a designated event.

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- (2) If so requested by a competent authority in an EEA State other than the United Kingdom, the Commission shall provide the authority with such information relating to rights to televise listed events or designated events as the Commission consider it appropriate to provide.]

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#### Textual Amendments

**F29** S. 104A inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 8

### 105 Interpretation of Part IV and supplementary provisions.

- (1) In this Part (unless the context otherwise requires)—
- “Channel 4” has the same meaning as in Part I of the 1990 Act;
  - “the Commission” means the Independent Television Commission;
  - [<sup>F30</sup>“designated event”, in relation to an EEA State other than the United Kingdom, has the meaning given by section 101A;]
  - “listed event” has the meaning given by section 97(1);
  - “live” [<sup>F31</sup>in relation to the televising of a listed event,] shall be construed in accordance with the code drawn up under section 104;
  - “national Channel 3 service” and “regional Channel 3 service” have the same meaning as in Part I of the 1990 Act;
  - [<sup>F32</sup>“S4C” has the same meaning as in Part I of the 1990 Act;]
  - “television broadcasting service” has the same meaning as in Part I of the 1990 Act;
  - “television programme provider” has the meaning given by section 99(2);
  - “television programme service” has the same meaning as in Part I of the 1990 Act.
- (2) Section 182 of the 1990 Act (certain events not to be shown on pay-per-view terms) shall cease to have effect.

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#### Textual Amendments

**F30** S. 105(1) definition of “designated event” inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 9(a)

**F31** S. 105(1) words in definition of  
“live”

inserted (19.1.2000) by S.I. 2000/54, reg. 3 Sch. para. 9(b)

**F32** S. 105(1) definition of “S4C” inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 9(c)

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## PART V

### THE BROADCASTING STANDARDS COMMISSION

#### *Establishment of Broadcasting Standards Commission*

#### **106 The Broadcasting Standards Commission.**

- (1) There shall be a commission, to be known as the Broadcasting Standards Commission (in this Part referred to as “the BSC”).
- (2) The BSC shall consist of—
  - (a) a chairman appointed by the Secretary of State,
  - (b) a deputy chairman or two deputy chairmen so appointed, and
  - (c) such number of other members appointed by the Secretary of State as he may from time to time determine,
 but so that the total number of members does not exceed fifteen.
- (3) Schedule 3 shall have effect with respect to the BSC.

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

- C9** [S. 106\(2\)\(c\)](#) (as read with Sch. 3 para. 1A) amended (1.7.1999) by [S.I. 1999/1750](#), arts. 1(1), 4, [Sch. 3](#); [S.I. 1998/3178](#), [art. 3](#)

#### *Unjust or unfair treatment or unwarranted infringement of privacy*

#### **107 Preparation by BSC of code relating to avoidance of unjust or unfair treatment or interference with privacy.**

- (1) It shall be the duty of the BSC to draw up, and from time to time review, a code giving guidance as to principles to be observed, and practices to be followed, in connection with the avoidance of—
  - (a) unjust or unfair treatment in programmes to which this section applies, or
  - (b) unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
- (2) It shall be the duty of each broadcasting or regulatory body, when drawing up or revising any code relating to principles and practice in connection with programmes, or in connection with the obtaining of material to be included in programmes, to reflect the general effect of so much of the code referred to in subsection (1) (as for the time being in force) as is relevant to the programmes in question.
- (3) The BSC shall from time to time publish the code (as for the time being in force).
- (4) Before drawing up or revising the code, the BSC shall consult—
  - (a) each broadcasting or regulatory body, and
  - (b) such other persons as appear to the BSC to be appropriate.
- (5) This section applies to—
  - (a) any programme broadcast by the BBC,

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- (b) any programme broadcast by the Welsh Authority or included in the service referred to in section 57(1A)(a) of the 1990 Act, and
- (c) any programme included in a licensed service.

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

**C10** S. 107 applied (27.7.2000) by **S.I. 2000/1864, art. 2, Sch. para. 1**

*Portrayal of violence or sexual conduct etc.*

**108 Preparation by BSC of code relating to broadcasting standards generally.**

- (1) It shall be the duty of the BSC to draw up, and from time to time review, a code giving guidance as to—
  - (a) practices to be followed in connection with the portrayal of violence in programmes to which this section applies,
  - (b) practices to be followed in connection with the portrayal of sexual conduct in such programmes, and
  - (c) standards of taste and decency for such programmes generally.
- (2) It shall be the duty of each broadcasting or regulatory body, when drawing up or revising any code relating to standards and practice for programmes, to reflect the general effect of so much of the code referred to in subsection (1) (as for the time being in force) as is relevant to the programmes in question.
- (3) The BSC shall from time to time publish the code referred to in subsection (1) (as for the time being in force).
- (4) Before drawing up or revising the code the BSC shall consult—
  - (a) each broadcasting or regulatory body, and
  - (b) such other persons as appear to the BSC to be appropriate.
- (5) This section applies to—
  - (a) any programme broadcast by the BBC,
  - (b) any programme broadcast by the Welsh Authority or included in the service referred to in section 57(1A)(a) of the 1990 Act,
  - (c) any programme included in a licensed service, and
  - (d) any programme included in so much of a local delivery service licensed under Part II of the 1990 Act as is, by virtue of section 79(2) or (4) of that Act, treated for certain purposes as the provision of a service licensed under Part I of that Act.
- (6) The code drawn up by the Broadcasting Standards Council under section 152 of the 1990 Act, as that code is in force immediately before the commencement of this section, shall be taken to have been drawn up by the BSC under this section.

**109 Monitoring by BSC of broadcasting standards.**

- (1) It shall be the duty of the BSC to monitor programmes to which section 108 applies with a view to enabling the BSC to make reports on the portrayal of violence and

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sexual conduct in, and the standards of taste and decency attained by, such programmes generally.

- (2) Subject to section 125(2), the BSC may make reports on the matters specified in subsection (1) on such occasions as they think fit; and any such report may include an assessment of either or both of the following, namely—
  - (a) the attitudes of the public at large towards the portrayal of violence or sexual conduct in, or towards the standards of taste and decency attained by, programmes to which section 108 applies, and
  - (b) any effects or potential effects on the attitudes or behaviour of particular categories of persons of the portrayal of violence or sexual conduct in such programmes or of any failure on the part of such programmes to attain standards of taste and decency.
- (3) The BSC may publish any report made by them in pursuance of subsection (1).
- (4) The BSC shall have the further duty of monitoring, so far as is reasonably practicable, all television and sound programmes which are transmitted or sent from outside the United Kingdom but are capable of being received there, with a view to ascertaining—
  - (a) how violence and sexual conduct are portrayed in those programmes, and
  - (b) the extent to which those programmes meet standards of taste and decency.

### *Complaints*

#### **110 General functions of BSC in relation to complaints.**

- (1) Subject to the provisions of this Part, it shall be the duty of the BSC to consider and adjudicate on complaints which are made to them in accordance with sections 111 and 114 and relate—
  - (a) to unjust or unfair treatment in programmes to which section 107 applies, or
  - (b) to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
- (2) Subject to those provisions, it shall also be the duty of the BSC to consider, and make findings on, complaints which are made to them in accordance with sections 113 and 114 and relate—
  - (a) to the portrayal of violence or sexual conduct in programmes to which section 108 applies, or
  - (b) to alleged failures on the part of such programmes to attain standards of taste and decency.
- (3) In exercising their functions under subsection (1), the BSC shall take into account any relevant provisions of the code maintained by them under section 107; and in exercising their functions under subsection (2) they shall take into account any relevant provisions of the code maintained by them under section 108.
- (4) In this Part—
 

“a fairness complaint” means a complaint to the BSC in respect of any of the matters referred to in subsection (1)(a) and (b), and

“a standards complaint” means a complaint to the BSC in respect of any of the matters referred to in subsection (2)(a) and (b).



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## **111 Complaints of unfair treatment etc.**

- (1) A fairness complaint may be made by an individual or by a body of persons, whether incorporated or not, but, subject to subsection (2), shall not be entertained by the BSC unless made by the person affected or by a person authorised by him to make the complaint for him.
- (2) Where the person affected is an individual who has died, a fairness complaint may be made by his personal representative or by a member of the family of the person affected, or by some other person or body closely connected with him (whether as his employer, or as a body of which he was at his death a member, or in any other way).
- (3) Where the person affected is an individual who is for any reason both unable to make a complaint himself and unable to authorise another person to do so for him, a fairness complaint may be made by a member of the family of the person affected, or by some other person or body closely connected with him (whether as his employer, or as a body of which he is a member, or in any other way).
- (4) The BSC shall not entertain, or proceed with the consideration of, a fairness complaint if it appears to them that the complaint relates to the broadcasting of the relevant programme, or to its inclusion in a licensed service, on an occasion more than five years after the death of the person affected, unless it appears to them that in the particular circumstances it is appropriate to do so.
- (5) The BSC may refuse to entertain a fairness complaint if it appears to them not to have been made within a reasonable time after the last occasion on which the relevant programme was broadcast or, as the case may be, included in a licensed service.
- (6) Where, in the case of a fairness complaint, the relevant programme was broadcast or included in a licensed service after the death of the person affected, subsection (5) shall apply as if at the end there were added “within five years (or such longer period as may be allowed by the BSC in the particular case under subsection (4)) after the death of the person affected”.
- (7) The BSC may refuse to entertain—
  - (a) a fairness complaint which is a complaint of unjust or unfair treatment if the person named as the person affected was not himself the subject of the treatment complained of and it appears to the BSC that he did not have a sufficiently direct interest in the subject-matter of that treatment to justify the making of a complaint with him as the person affected, or
  - (b) a complaint made under subsection (2) or (3) by a person other than the person affected or a person authorised by him, if it appears to the BSC that the complainant’s connection with the person affected is not sufficiently close to justify the making of the complaint by him.

## **112 Committee to consider fairness complaints.**

The BSC shall appoint a committee, consisting of members of the BSC, to discharge the functions of the BSC in relation to the consideration of fairness complaints.

## **113 Complaints relating to taste and decency, etc.**

- (1) The BSC shall not entertain a standards complaint which is made—

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- (a) where the relevant programme is a television programme, more than two months after the relevant date, or
- (b) where the relevant programme is a sound programme, more than three weeks after that date,

unless it appears to them that in the particular circumstances it is appropriate for them to do so.

(2) In subsection (1) “the relevant date” means—

- (a) the date on which the relevant programme was broadcast by a broadcasting body or included in a licensed service, or
- (b) where it has been so broadcast or included on more than one occasion, the date on which it was last so broadcast or included.

(3) Where, apart from this subsection, there would fall to be considered by the BSC two or more standards complaints which appear to them to raise the same, or substantially the same, issue or issues in relation to a particular programme, the BSC may determine that those complaints shall be treated for the purposes of this Part as constituting a single complaint.

#### **114 Supplementary provisions as to making of complaints of either kind.**

- (1) A fairness complaint or a standards complaint must be in writing, or in such other form as the BSC may allow, and must give particulars of the matters complained of.
- (2) The BSC shall not entertain, or proceed with the consideration of, a fairness complaint or a standards complaint if it appears to them—
  - (a) that the matter complained of is the subject of proceedings in a court of law in the United Kingdom, or
  - (b) that the matter complained of is a matter in respect of which the complainant or, in the case of a fairness complaint, the person affected has a remedy by way of proceedings in a court of law in the United Kingdom, and that in the particular circumstances it is not appropriate for the BSC to consider a complaint about it, or
  - (c) that the complaint is frivolous, or
  - (d) that for any other reason it is inappropriate for them to entertain, or proceed with the consideration of, the complaint.

#### **115 Consideration of fairness complaints.**

- (1) Subject to the provisions of sections 111 and 114, every fairness complaint made to the BSC shall be considered by them either at a hearing or, if they think fit, without a hearing.
- (2) Hearings under this section shall be held in private; and where such a hearing is held in respect of a fairness complaint, each of the following persons shall be given an opportunity to attend and be heard, namely—
  - (a) the complainant,
  - (b) the relevant person,
  - (c) where the relevant programme was included in a licensed service, the appropriate regulatory body,

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- (d) any person not falling within any of paragraphs (a) to (c) who appears to the BSC to have been responsible for the making or provision of that programme, and
  - (e) any other person who the BSC consider might be able to assist at the hearing.
- (3) Before the BSC proceed to consider a fairness complaint they shall send a copy of it—
- (a) to the relevant person, and
  - (b) where the relevant programme was included in a licensed service, to the appropriate regulatory body.
- (4) Where the relevant person receives from the BSC a copy of the complaint, it shall be the duty of that person, if so required by the BSC—
- (a) to provide the BSC with a visual or sound recording of the relevant programme or of any specified part of it, if and so far as the relevant person has such a recording in his possession;
  - (b) to make suitable arrangements for enabling the complainant to view or hear the relevant programme, or any specified part of it, if and so far as the relevant person has in his possession a visual or sound recording of it;
  - (c) to provide the BSC and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the relevant person is able to do so;
  - (d) to provide the BSC and the complainant with copies of any documents in the possession of the relevant person, being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint;
  - (e) to furnish to the BSC and the complainant a written statement in answer to the complaint.
- (5) Where the relevant person receives from the BSC a copy of a fairness complaint, it shall also be the duty of that person, if so required by the BSC—
- (a) where the relevant person is a broadcasting body, to arrange for one or more of the governors, members or employees of the body to attend the BSC and assist them in their consideration of the complaint, or
  - (b) where the relevant person is a body other than a broadcasting body, to arrange for one or more of the following, namely—
    - (i) the persons who take part in the management or control of the body, or
    - (ii) the employees of the body,to attend the BSC and assist them in their consideration of the complaint, or
  - (c) where the relevant person is an individual, to attend, or to arrange for one or more of his employees to attend, the BSC and assist them in their consideration of the complaint.
- (6) Where the relevant person receives from the BSC a copy of a fairness complaint and, in connection with the complaint, the BSC make to any other person a request to which this subsection applies, it shall be the duty of the relevant person to take such steps as he reasonably can to ensure that the request is complied with.
- (7) Subsection (6) applies to the following requests by the BSC to any such other person as is there mentioned, namely—
- (a) a request to make suitable arrangements for enabling the complainant and any member or employee of the BSC to view or hear the relevant programme,

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- or any specified part of it, if and so far as the person requested has in his possession a visual or sound recording of it;
- (b) a request to provide the BSC and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the person requested is able to do so;
  - (c) a request to provide the BSC and the complainant with copies of any documents in the possession of the person requested, being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint;
  - (d) a request to furnish to the BSC and the complainant a written statement in answer to the complaint;
  - (e) a request to attend, or (where the person requested is not an individual) to arrange for a representative to attend, the BSC and assist them in their consideration of the complaint.
- (8) Where the BSC have adjudicated on a fairness complaint, they shall send a statement of their findings to the complainant.
- (9) In this section “the relevant person” means—
- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body, and
  - (b) in a case where the relevant programme was included in a licensed service, the licence holder providing the service.

## **116 Consideration of standards complaints.**

- (1) Subject to the provisions of sections 113 and 114, every standards complaint made to the BSC shall be considered by them either without a hearing or, if they think fit, at a hearing (and any such hearing shall be held in private unless the BSC decide otherwise).
- (2) Where a hearing is held in respect of a standards complaint, each of the following persons shall be given an opportunity to attend and be heard, namely—
- (a) the complainant,
  - (b) the relevant person,
  - (c) where the relevant programme was included in a licensed service, the appropriate regulatory body,
  - (d) any person not within any of paragraphs (a) to (c) who appears to the BSC to have been responsible for the making or provision of that programme, and
  - (e) any other person who the BSC consider might be able to assist at the hearing.
- (3) In a case where the BSC have made a determination in respect of any complaints under subsection (3) of section 113, subsection (2)(a) shall be construed as referring to such one or more of the persons who made those complaints as the BSC may determine.
- (4) Before the BSC proceed to consider a standards complaint they shall send a copy of it—
- (a) to the relevant person, and
  - (b) where the relevant programme was included in a licensed service, to the appropriate regulatory body.

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- (5) Where the relevant person receives from the BSC a copy of the complaint, it shall be the duty of that person, if so required by the BSC—
- (a) to provide the BSC with a visual or sound recording of the relevant programme or any specified part of it, if and so far as he has such a recording in his possession;
  - (b) to provide the BSC with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as he is able to do so;
  - (c) to provide the BSC with copies of any documents in his possession, being the originals or copies of any correspondence between him and the complainant in connection with the complaint;
  - (d) to furnish to the BSC a written statement in answer to the complaint.
- (6) In this section—
- “licensed service” includes so much of a local delivery service licensed under Part II of the 1990 Act as is, by virtue of section 79(2) or (4) of that Act, treated for certain purposes as the provision of a service licensed under Part I of that Act, and
- “the relevant person” means—
- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body, and
  - (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service.

#### **117 Duty to retain recordings.**

For the purposes of sections 115 and 116 of this Act and of section 167 of the 1990 Act (power to make copies of recordings in connection with certain offences) it shall be the duty of each broadcasting body to retain a recording of every television or sound programme which is broadcast by that body—

- (a) where it is of a television programme, during the period of 90 days beginning with the day of the broadcast, and
- (b) where it is of a sound programme, during the period of 42 days beginning with the day of the broadcast.

#### **118 Power to pay allowances to persons attending hearings.**

The BSC may, if they think fit, make to any person who attends them in connection with a fairness complaint or a standards complaint such payments as they think fit by way of travelling allowance or subsistence allowance where expenditure on travelling or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him so to attend.

#### **119 Publication of BSC’s findings.**

- (1) Where the BSC have—
- (a) considered and adjudicated upon a fairness complaint, or
  - (b) considered and made their findings on a standards complaint,
- they may give directions of the kind specified in subsection (2).

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- (2) Those directions are—
- (a) where the relevant programme was broadcast by a broadcasting body, directions requiring that body to publish the matters mentioned in subsection (3) in such manner, and within such period, as may be specified in the directions, and
  - (b) where the relevant programme was included in a licensed service, directions requiring the appropriate regulatory body to direct the licence holder to publish those matters in such manner, and within such period, as may be so specified.
- (3) Those matters are—
- (a) a summary of the complaint;
  - (b) the BSC's findings on the complaint or a summary of them;
  - (c) in the case of a standards complaint, any observations by the BSC on the complaint or a summary of any such observations.
- (4) References in subsection (2) to the publication of any matter are references to the publication of that matter without its being accompanied by any observations made by a person other than the BSC and relating to the complaint.
- (5) The form and content of any such summary as is mentioned in subsection (3)(a), (b) or (c) shall be such as may be approved by the BSC.
- (6) A broadcasting or regulatory body shall comply with any directions given to them under this section.
- (7) Any licence to provide a licensed service which is granted by a regulatory body under this Act shall include conditions requiring the licence holder to comply with such directions as may be given to him by that body for the purpose of enabling them to comply with any directions given to them under this section.
- (8) The BSC shall publish, monthly or at such other intervals as they think fit and in such manner as they think fit, reports each containing, as regards every fairness complaint or standards complaint which falls within this subsection and has been dealt with by them in the period covered by the report—
- (a) a summary of the complaint and the action taken by them on it,
  - (b) where they have adjudicated on it, a summary of—
    - (i) their findings,
    - (ii) any direction given under subsection (1), or other action taken by them, in relation to the complaint, and
  - (c) where a direction has been given under subsection (1) in relation to the complaint, a summary of any action taken by a broadcasting body, a regulatory body or the holder of a licence to provide a licensed service in pursuance of the direction.
- (9) A fairness complaint or standards complaint made to the BSC falls within subsection (8) unless it is one which under section 111(1), (4) or (5), 113(1) or 114(2) they have refused to entertain.
- (10) The BSC may, if they think fit, omit from any summary which is included in a report under subsection (8) and relates to a fairness complaint any information which could lead to the disclosure of the identity of any person connected with the complaint in question other than—

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- (a) a broadcasting or regulatory body, or
  - (b) a person providing a licensed service.
- (11) The references in subsections (3)(b) and (8)(b) to the BSC’s findings on a complaint shall be construed, in relation to a fairness complaint which has been considered by them in two or more parts, as references to their findings on each part of the complaint.
- (12) In this section “licensed service”, in relation to a programme to which a standards complaint relates, has the extended meaning given by section 116(6).

## **120 Reports on action taken voluntarily in response to findings on complaints.**

- (1) This section applies where the BSC have given a direction under section 119(1) in relation to a fairness complaint or a standards complaint.
- (2) Where the relevant programme was included in a licensed service, the appropriate regulatory body shall send to the BSC a report of any supplementary action taken by—
- (a) the regulatory body,
  - (b) the licence holder, or
  - (c) any other person appearing to the regulatory body to be responsible for the making or provision of the relevant programme.
- (3) Where the relevant programme was broadcast by a broadcasting body, that body shall send to the BSC a report of any supplementary action taken by—
- (a) the broadcasting body, or
  - (b) any other person appearing to that body to be responsible for the making or provision of the relevant programme.
- (4) The BSC may include, in any report under section 119(8), a summary of any report received by them under subsection (2) or (3) in relation to the complaint.
- (5) In this section “supplementary action”, in relation to a complaint, means action which, although not taken in pursuance of a direction under section 119(1), is taken in consequence of the findings of the BSC on the complaint.

## **121 Certain statements etc. protected by qualified privilege for purposes of defamation.**

- (1) For the purposes of the law relating to defamation—
- (a) publication of any statement in the course of the consideration by the BSC of, and their adjudication on, a fairness complaint,
  - (b) publication by the BSC of directions under section 119(1) relating to a fairness complaint, or
  - (c) publication of a report of the BSC, so far as the report relates to fairness complaints,
- is privileged unless the publication is shown to be made with malice.
- (2) Nothing in subsection (1) shall be construed as limiting any privilege subsisting apart from that subsection.

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### *Miscellaneous and general*

#### **122 Power of BSC to commission research.**

- (1) The BSC may make arrangements for the undertaking of research into matters related to or connected with—
  - (a) the avoidance of unjust or unfair treatment in programmes to which section 107 applies and of unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes,
  - (b) the portrayal of violence or sexual conduct in programmes to which section 108 applies, or
  - (c) standards of taste and decency for such programmes generally.
- (2) The matters into which research may be undertaken in pursuance of subsection (1) include, in particular, matters falling within section 109(2)(a) and (b).
- (3) Arrangements made under subsection (1) shall secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the BSC.
- (4) The BSC may publish the results of any research undertaken in pursuance of subsection (1).

#### **123 International representation by BSC of Government interests.**

The functions of the BSC shall include representing Her Majesty's Government in the United Kingdom, at the request of the Secretary of State, on international bodies concerned with setting standards for television programmes.

#### **124 Duty to publicise BSC.**

- (1) It shall be the duty of each broadcasting or regulatory body to arrange for the publication (by means of broadcasts or otherwise) of regular announcements publicising the BSC.
- (2) Any such announcements may contain a statement of the difference between fairness complaints and standards complaints.
- (3) Any licence to provide a licensed service which is granted by a regulatory body under the 1990 Act or under this Act shall include conditions requiring the licence holder to comply with such directions as may be given to him by that body in connection with the performance by them of their duty under subsection (1).
- (4) In this section “licensed service” has the extended meaning given by section 116(6).

#### **125 Annual reports.**

- (1) As soon as possible after the end of every financial year the BSC shall prepare a report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.

[<sup>F33</sup>(1A) Where a report is transmitted by the BSC under subsection (1) to the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), the Scottish Ministers shall lay a copy of the report before the Scottish Parliament.]



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- (2) The report shall include a report by the BSC on the matters specified in section 109(1).
- (3) If the Secretary of State so directs, the report shall also include such further information relating to the BSC as he may specify in the direction.
- (4) The report may also include a report on any issues of the kind referred to in section 126.
- (5) The BSC shall send a copy of the report, together with a copy of the statement of accounts for the year and of the report of the Comptroller and Auditor General on that statement—
  - (a) to each broadcasting or regulatory body, and
  - (b) if so requested by any person providing a licensed service, to that person.
- (6) In this section “licensed service” has the extended meaning given by section 116(6).

#### Textual Amendments

**F33** S. 125(1A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(1), **Sch. 5 para. 17** (with art. 7); S.I. 1998/3178, **art. 3**

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

**C11** S. 125: certain functions made exercisable by the Scottish Ministers concurrently with the Minister concerned (1.7.1999) by S.I. 1999/1750, arts. 1(1), 3, **Sch. 2** (with art. 7); S.I. 1998/3178, **art. 3**

**C12** S. 125(1) amended (30.6.1999) by S.I. 1999/1756, arts. 1(1), 2, **Sch. para. 19(1)**; S.I. 1998/3178, **art. 3**

### 126 Reports to Secretary of State.

The BSC may from time to time make a report to the Secretary of State on any issues identified by them in the course of carrying out their functions under this Part and appearing to them to raise questions of general broadcasting policy.

### 127 Contributions towards cost of BSC.

- (1) For the financial year which includes the commencement of this section and each subsequent financial year the Secretary of State shall, subject to subsection (2), notify—
  - (a) to each regulatory body the sum which he considers to be the appropriate contribution of that body, in respect of persons providing licensed services under licences granted by that body, towards the expenses of the BSC; and
  - (b) to the Welsh Authority the sum which he considers to be the appropriate contribution of that body towards such expenses.
- (2) The total of the sums notified under subsection (1) for any financial year must be such that the aggregate of—
  - (a) that total, and
  - (b) the amount of any contribution towards the expenses of the BSC for that year which is received, or to be received, by the Secretary of State from the BBC, represents one half of those expenses.
- (3) Each regulatory body and the Welsh Authority shall pay to the Secretary of State any sum notified to them under subsection (1).

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## 128 **Transfer of assets of Broadcasting Complaints Commission and Broadcasting Standards Council to BSC and dissolution of those bodies.**

- (1) In this section “the existing boards” means the Broadcasting Complaints Commission and the Broadcasting Standards Council.
- (2) On such day as the Secretary of State may by order appoint as the transfer date all the property, rights and liabilities to which either of the existing boards were entitled or subject immediately before that date shall become property, rights and liabilities of the BSC; and Schedule 4 shall have effect for the purpose of supplementing this and the following provisions of this section.
- (3) Each of the existing boards shall continue in existence after the transfer date until such time as they are respectively dissolved by order made by the Secretary of State.
- (4) On the transfer date the chairman and members of the existing boards shall cease to hold office; and as from that date each of the existing boards—
  - (a) shall consist only of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as the Secretary of State may appoint as members, and
  - (b) shall have only the functions which fall to be carried out by them under or by virtue of Schedule 4.
- (5) If requested to do so by the chairman appointed under subsection (4)(a) to either of the existing boards, the BSC shall furnish that existing board with any assistance required by them for the purposes of carrying out any of those functions.
- (6) The Secretary of State shall not make an order under subsection (3) in relation to either of the existing boards unless he is satisfied, after consultation with that existing board and the BSC, that nothing further remains to be done by that existing board under or by virtue of Schedule 4.
- (7) References in this section and Schedule 4 to property, rights and liabilities of either of the existing boards include references to property, rights and liabilities which are not capable of being transferred or assigned by them.

### **Subordinate Legislation Made**

**P1** [S. 128\(2\)](#) power fully exercised (21.3.1997): 1.4.1997 appointed as transfer date by [S.I. 1997/1005](#), [art. 3](#)

## 129 **Transitional provisions relating to complaints.**

- (1) This Part shall have effect in relation to—
  - (a) any complaint to the Broadcasting Complaints Commission under section 144 of the 1990 Act made but not disposed of by them before the transfer date, or
  - (b) any complaint to the Broadcasting Standards Council under section 154 of that Act made but not disposed of by them before that date,
 as if the complaint had been made to the BSC under this Part, and anything done by the Broadcasting Complaints Commission or, as the case requires, the Broadcasting Standards Council in relation to the complaint before the transfer date had been done by the BSC.
- (2) In subsection (1) “the transfer date” means the date appointed under section 128(2).

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## 130 Interpretation of Part V.

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

“the appropriate regulatory body”, in relation to a programme included in a licensed service, means the regulatory body by whom that service is licensed;

“broadcasting body” means the BBC or the Welsh Authority;

“the BSC” means the Broadcasting Standards Commission;

“fairness complaint” has the meaning given by section 110(4);

“financial year” means the twelve months ending with 31st March;

“licensed service” means, subject to sections 116(6), 119(12), 124(4) and 125(6),—

(a) any television programme service (within the meaning of Part I of the 1990 Act) which is licensed under that Part,

(b) any independent radio service (within the meaning of Part III of the 1990 Act) which is licensed under that Part,

(c) any additional service (within the meaning of Part I or III of the 1990 Act) which is licensed under that Part and is for general reception in, or in any area in, the United Kingdom,

(d) any digital programme service (within the meaning of Part I of this Act) which is licensed under that Part,

(e) any qualifying service (within the meaning of Part I of this Act) provided by a person other than the Welsh Authority,

(f) any digital sound programme service (within the meaning of Part II of this Act) which is licensed under that Part,

(g) any simulcast radio service (within the meaning of Part II of this Act), and

(h) any digital additional service (within the meaning of Part I or II of this Act) which is licensed under that Part;

“local delivery service” has the meaning given by section 72 of the 1990 Act;

“participant”, in relation to a programme, means a person who appeared, or whose voice was heard, in the programme;

“the person affected”—

(a) in relation to any such unjust or unfair treatment as is mentioned in section 110(1), means a participant in the programme in question who was the subject of that treatment or a person who, whether such a participant or not, had a direct interest in the subject-matter of that treatment, and

(b) in relation to any such unwarranted infringement of privacy as is so mentioned, means a person whose privacy was infringed;

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

“regulatory body” means the Independent Television Commission or the Radio Authority;

“the relevant programme”, in relation to a complaint, means the programme to which the complaint relates;

“sexual conduct” means any form of sexual activity or other sexual behaviour;

“standards complaint” has the meaning given by section 110(4);

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“unjust or unfair treatment” includes treatment which is unjust or unfair because of the way in which material included in a programme has been selected or arranged.

- (2) In this Part—
- (a) any reference to programmes to which section 107 applies shall be construed in accordance with section 107(5), and
  - (b) any reference to programmes to which section 108 applies shall be construed in accordance with section 108(5).

## PART VI

### THE BRITISH BROADCASTING CORPORATION

#### *Transfer of property, rights and liabilities relating to BBC transmission network*

#### **131 Power of BBC to make transfer schemes relating to its transmission network.**

- (1) The BBC may make a scheme or schemes providing for the transfer to any person or persons of such property, rights and liabilities of the BBC as are specified in, or determined in accordance with the scheme, being property, rights and liabilities which, immediately before the day on which the scheme comes into force, subsist for the purposes of or in connection with or are otherwise attributable to the BBC transmission network.
- (2) In subsection (1) “the BBC transmission network” means so much of the undertaking of the BBC as is concerned with the provision of broadcasting transmission services or services related to those services.
- (3) In this Part “transfer scheme” means a scheme made under subsection (1).
- (4) Schedule 5 shall have effect with respect to transfer schemes.

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

**C13** **S. 131** extended (with modifications) (22.8.1997): to Guernsey by [S.I. 1997/1755, art. 2, Sch.](#); to the Isle of Man by [S.I. 1997/1756, art. 2, Sch.](#); to Jersey by [S.I. 1997/1757, art. 2, Sch.](#)

#### **132 Powers of Secretary of State in relation to transfer schemes.**

- (1) A transfer scheme shall not take effect unless it is approved by the Secretary of State; and where such a scheme is submitted to the Secretary of State for his approval, he may modify the scheme before approving it.
- (2) Subject to subsection (3), the Secretary of State shall not approve a transfer scheme containing any provision in accordance with which any person other than a wholly-owned subsidiary of the BBC becomes entitled or subject to any property, rights and liabilities unless it appears to the Secretary of State that the person has consented to the provisions of the scheme so far as they relate to him.
- (3) Subsection (2) shall not require the consent of any person to so much of a transfer scheme as—

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- (a) relates to property, rights or liabilities to which that person is already entitled or subject, and
  - (b) appears to the Secretary of State to be made for purposes that are no more than supplemental or incidental to the other provisions of the scheme.
- (4) Before—
- (a) declining to approve a transfer scheme, or
  - (b) modifying such a scheme,
- the Secretary of State shall consult the BBC and every person who is a transferee under the scheme.
- (5) It shall be the duty of the BBC and every person who is a transferee under a transfer scheme to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on him by this paragraph.
- (6) In this section “wholly-owned subsidiary” has the meaning given by section 736 of the <sup>M11</sup>Companies Act 1985.

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

**C14** S. 132 extended (with modifications) (22.8.1997): to Guernsey by S.I. 1997/1755, art. 2, **Sch.**; to the Isle of Man by S.I. 1997/1756, art. 2, **Sch.**; to Jersey by S.I. 1997/1757, art. 2, **Sch.**

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**Marginal Citations**

**M11** 1985 c. 6.

### 133 Agreements with respect to transfer schemes.

- (1) The BBC may enter into any such agreement with another person as they think fit for the purpose of accepting or imposing contractual obligations with respect to, or to anything connected with, the manner in which their powers by virtue of section 131 are to be exercised.
- (2) Any agreement may, in particular, provide for the making of payments, or the issue of shares or securities, to the BBC (by way of consideration or otherwise) in respect of anything created or transferred in accordance with a transfer scheme.
- (3) The consent of the Secretary of State shall be required for the making by the BBC of an agreement under this section.

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

**C15** S. 133 extended (with modifications) (22.8.1997): to Guernsey by S.I. 1997/1755, art. 2, **Sch.**; to the Isle of Man by S.I. 1997/1756, art. 2, **Sch.**; to Jersey by S.I. 1997/1757, art. 2, **Sch.**

### 134 Transfer schemes: successor companies.

Schedule 6 (which makes provision about the accounts etc. of wholly-owned subsidiaries of the BBC to which any property, rights or liabilities are transferred in accordance with a transfer scheme) shall have effect.

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**135 Taxation provisions with respect to transfer schemes.**

Schedule 7 (which makes provision about tax in connection with transfer schemes) shall have effect.

*Services provided by BBC companies*

**136 Services provided by BBC companies.**

Schedule 8 (which makes amendments of the 1990 Act relating to the regulation by the Independent Television Commission and the Radio Authority of services provided by bodies corporate in which the BBC have an interest) shall have effect.

**PART VII**

COPYRIGHT AND RELATED MATTERS

**137 Avoidance of certain terms relating to use for purpose of news reporting of visual images from broadcast or cable programme.**

- (1) Any provision in an agreement is void in so far as it purports to prohibit or restrict relevant dealing with a broadcast or cable programme in any circumstances where by virtue of section 30(2) of the <sup>M12</sup>Copyright, Designs and Patents Act 1988 (fair dealing for the purpose of reporting current events) copyright in the broadcast or cable programme is not infringed.
- (2) In subsection (1)—
  - (a) “relevant dealing”, in relation to a broadcast or cable programme, means dealing by including visual images taken from it in another broadcast or cable programme, and
  - (b) “broadcast” and “cable programme” have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988.

**Marginal Citations**

M12 1988 c. 48.

**138 Amendments of Copyright, Designs and Patents Act 1988 relating to cable programme services.**

Schedule 9 (which contains amendments of the Copyright, Designs and Patents Act 1988 relating to broadcasts included in cable programme services) shall have effect.

**139 Copyright licensing.**

- (1) After section 135G of the Copyright, Designs and Patents Act 1988 there is inserted—

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**“135H Power to amend sections 135A to 135G.**

- (1) The Secretary of State may by order, subject to such transitional provision as appears to him to be appropriate, amend sections 135A to 135G so as—
  - (a) to include in any reference to sound recordings any works of a description specified in the order; or
  - (b) to exclude from any reference to a broadcast or cable programme service any broadcast or cable programme service of a description so specified.
- (2) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”

(2) After section 151 of that Act there is inserted—

**“151A Award of interest.**

- (1) Any of the following, namely—
  - (a) a direction under section 123(3) so far as relating to a licence for broadcasting a work or including a work in a cable programme service;
  - (b) a direction under section 128(3) so far as so relating;
  - (c) an order under section 135D(1); and
  - (d) an order under section 135F confirming or varying an order under section 135D(1),

may award simple interest at such rate and for such period, beginning not earlier than the relevant date and ending not later than the date of the order, as the Copyright Tribunal thinks reasonable in the circumstances.

- (2) In this section “the relevant date” means—
  - (a) in relation to a direction under section 123(3), the date on which the reference was made;
  - (b) in relation to a direction under section 128(3), the date on which the reference or application was made;
  - (c) in relation to an order section 135D(1), the date on which the first payment under section 135C(2) became due; and
  - (d) in relation to an order under section 135F, the date on which the application was made.”

(3) Subsection (2) does not apply in any case where the reference or application to the Copyright Tribunal was or is made before the commencement of this section.

F34 140 .....

**Textual Amendments**

F34 S. 140 repealed (28.5.2000) by S.I. 2000/1175, reg. 4

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F35 **141** .....

**Textual Amendments**

**F35** S. 141 repealed (28.5.2000) by 2000/1175, reg. 4

## PART VIII

### MISCELLANEOUS AND GENERAL

#### *Standards for transmission systems*

**142 Standards for transmission systems.**

- (1) The Independent Television Commission (in this section referred to as “the Commission”) shall do all that they can to secure that every licensed service uses a transmission system complying with Article 2 of Council Directive [95/47/EC](#) on the use of standards for the transmission of television signals (“the Directive”).
- (2) In this section “Community digital standard” means any of the alternatives permitted within the mandatory parts of the standards to be met by a transmission system for the purpose of complying with Article 2(c) of the Directive (which relates to television services that are fully digital).
- (3) The Commission may, after consultation with the persons specified in subsection (6), specify particular Community digital standards to be met in the provision of licensed services which are fully digital.
- (4) In deciding whether, and if so how, to exercise their powers under subsection (3), the Commission shall, in particular—
  - (a) have regard to the desirability of promoting—
    - (i) mutual technical compatibility between digital television services, and
    - (ii) the development of digital television broadcasting, and
  - (b) consider whether it would be reasonably practicable for persons providing licensed services which are fully digital to use transmission systems meeting the Community digital standards in question.
- (5) Where the Commission have exercised their powers under subsection (3), they shall—
  - (a) publish notice of their determination in such manner as they think fit, and
  - (b) do all that they can to secure that any licensed service which is fully digital uses a transmission system meeting the Community digital standards specified under that subsection.
- (6) The persons referred to in subsection (3) are—
  - (a) every person providing a licensed service,
  - (b) the BBC,
  - (c) the Welsh Authority,
  - (d) the Secretary of State,



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- (e) the Director General of Telecommunications,
- [<sup>F36</sup>(f) the Office of Fair Trading,]
- (g) such persons appearing to them to represent manufacturers of television broadcasting or receiving equipment as they think fit,
- (h) such persons appearing to them to represent viewers as they think fit, and
- (i) such other persons as they think fit.

(7) In this section—

“licensed service” means any service licensed by the Commission under Part I of this Act or Part I or II of the 1990 Act or provided under a relevant cable licence, but does not include any service which is only broadcast or transmitted for reception outside the European Economic Area;

“relevant cable licence” means a relevant licence within the meaning of Part III of Schedule 12 to the 1990 Act (transitional provisions relating to existing cable services).

#### Textual Amendments

**F36** S. 142(6)(f) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 34\(2\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *Disqualification on grounds relating to political objects*

### **143 Duties of Independent Television Commission and Radio Authority in cases involving disqualification on grounds related to political objects.**

- (1) If it appears to the Independent Television Commission that there are grounds for suspecting that any person who is an applicant for a licence under Part I or II of the 1990 Act or Part I of this Act is by virtue of any of the provisions specified in subsection (5) a disqualified person in relation to that licence, the Commission shall be regarded as failing to discharge their duty under section 5(1) of the 1990 Act, or as the case may be section 5(1) of this Act, if they grant the licence to that person without being provided with information which satisfies them that he is not on those grounds a disqualified person by virtue of that provision.
- (2) If it appears to the Independent Television Commission that there are grounds for suspecting that any person who is the holder of a licence under Parts I or II of the 1990 Act or Part I of this Act is by virtue of any of the provisions specified in subsection (5) a disqualified person in relation to that licence, the Commission shall be regarded as failing to discharge their duty under section 5(1) of the 1990 Act, or as the case may be section 5(1) of this Act, unless—
  - (a) they require him to provide them with information for the purpose of determining whether he is on those grounds a disqualified person by virtue of that provision, and
  - (b) if they are satisfied that he is a disqualified person, they revoke the licence.
- (3) If it appears to the Radio Authority that there are grounds for suspecting that any person who is an applicant for a licence under Part III of the 1990 Act or Part II of this Act is by virtue of any of the provisions specified in subsection (5) a disqualified person in relation to that licence, the Authority shall be regarded as failing to discharge their duty under section 88(1) of the 1990 Act, or as the case may be section 44(1)

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of this Act, if they grant the licence to that person without being provided with information which satisfies them that he is not on those grounds a disqualified person by virtue of that provision.

- (4) If it appears to the Radio Authority that there are grounds for suspecting that any person who is the holder of a licence under Part III of the 1990 Act or Part II of this Act is by virtue of any of the provisions specified in subsection (5) a disqualified person in relation to that licence, the Authority shall be regarded as failing to discharge their duty under section 88(1) of the 1990 Act, or as the case may be section 44(1) of this Act, unless—
- (a) they require him to provide them with information for the purpose of determining whether he is a disqualified person on those grounds by virtue of that provision, and
  - (b) if they are satisfied that he is a disqualified person, they revoke the licence.
- (5) The provisions referred to in subsections (1) to (4) are the following provisions of paragraph 1(1) of Part II of Schedule 2 to the 1990 Act—
- (a) paragraphs (d) to (g),
  - (b) paragraph (h) so far as relating to participation by bodies falling within paragraph (d), (e) or (g),
  - (c) paragraph (hh) so far as relating to a body corporate controlled by a body corporate in which a body falling within paragraph (d), (e) or (g) is a participant with more than a 5 per cent. interest,
  - (d) paragraph (i) so far as relating to control by a person falling within any of paragraphs (d) to (g) or by two or more such persons, and
  - (e) paragraph (j) so far as relating to participation by a body corporate which is controlled by a person falling within any of paragraphs (d) to (g) or by two or more such persons.
- (6) Nothing in subsections (1) to (5) shall be taken to limit the generality of—
- (a) the duty imposed on the Independent Television Commission by section 5(1) of the 1990 Act or section 5(1) of this Act, or
  - (b) the duty imposed on the Radio Authority by section 88(1) of the 1990 Act or section 44(1) of this Act.

*Provision of false information, etc.*

#### **144 Offence of providing false information in certain circumstances.**

- (1) A person who, in connection with an application by him for, or his continued holding of, a licence under the 1990 Act or this Act—
- (a) makes to the relevant authority a statement which he knows to be false in a material particular, or
  - (b) recklessly makes to the relevant authority a statement which is false in a material particular,

is guilty of an offence if the statement relates to a matter which would be relevant in determining whether he is by virtue of any of the provisions specified in subsection (3) a disqualified person, and he is by virtue of any of those provisions a disqualified person in relation to that licence.

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- (2) A person who, in connection with an application by him for, or his continued holding of, a licence under the 1990 Act or this Act, withholds any information with the intention of causing the relevant authority to be misled is guilty of an offence if—
  - (a) the information would be relevant in determining whether he is by virtue of any of the provisions specified in subsection (3) a disqualified person, and
  - (b) he is by virtue of any of those provisions a disqualified person in relation to that licence.
- (3) The provisions referred to in subsections (1) and (2) are the following provisions of paragraph 1(1) of Part II of Schedule 2 to the 1990 Act—
  - (a) paragraphs (d) to (g),
  - (b) paragraph (h) so far as relating to participation by bodies falling within paragraph (d), (e) or (g),
  - (c) paragraph (hh) so far as relating to a body corporate controlled by a body corporate in which a body falling within paragraph (d), (e) or (g) is a participant with more than a 5 per cent. interest,
  - (d) paragraph (i) so far as relating to control by a person falling within any of paragraphs (d) to (g) or by two or more such persons, and
  - (e) paragraph (j) so far as relating to participation by a body corporate which is controlled by a person falling within any of paragraphs (d) to (g) or by two or more such persons.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.
- (5) In this section “the relevant authority” means—
  - (a) in relation to any licence under Part I or II of the 1990 Act or Part I of this Act, the Independent Television Commission, and
  - (b) in relation to any licence under Part III of the 1990 Act or Part II of this Act, the Radio Authority.

#### **145 Disqualification for offence of supplying false information, etc.**

- (1) Where a person is convicted of an offence under section 144 the court by which he is convicted may make an order (in this section referred to as a “disqualification order”) disqualifying him from holding a licence during a period specified in the order.
- (2) The period specified in a disqualification order shall not exceed five years beginning with the date on which the order takes effect.
- (3) Where an individual is disqualified from holding a licence by virtue of a disqualification order, any body corporate—
  - (a) of which he is a director, or
  - (b) in the management of which he is directly or indirectly concerned,is also disqualified from holding a licence.
- (4) Where the holder of a licence is disqualified by virtue of a disqualification order, the licence shall be treated as being revoked with effect from the time when the order takes effect.

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- (5) For the purposes of any of the provisions specified in subsection (6) (which relate to the imposition of a financial penalty on the revocation of a licence), a licence which is revoked by virtue of subsection (4) shall be taken to have been revoked by the relevant authority as mentioned in that provision.
- (6) The provisions referred to in subsection (5) are as follows—
- (a) section 18(3) of the 1990 Act,
  - (b) section 101(3) of the 1990 Act,
  - (c) section 11(5), and
  - (d) section 53(5).
- (7) In sections 5(1)(a) and 88(1)(a) of the 1990 Act and sections 5(1)(a) and 44(1)(a) of this Act, the reference to a person who is a disqualified person by virtue of Part II of Schedule 2 to the 1990 Act includes a reference to a person who is disqualified by virtue of a disqualification order.
- (8) In this section—
- “licence” means any licence granted by the Independent Television Commission or the Radio Authority under the 1990 Act or this Act;
- “the relevant authority” has the same meaning as in section 144.

#### **146 Supplementary provisions as to disqualification orders.**

- (1) A person disqualified by a disqualification order may appeal against the order in the same manner as against a conviction.
- (2) A disqualification order made by a court in England and Wales or Northern Ireland—
- (a) shall not take effect until the end of the period within which the person on whose conviction the order was made can appeal against the order, and
  - (b) if he so appeals, shall not take effect until the appeal has been determined or abandoned.
- (3) A disqualification order made by a court in Scotland—
- (a) shall not take effect until the end of the period within which the person on whose conviction the order was made can appeal against the order, and
  - (b) if an appeal against the order or the conviction is taken within that period, shall not take effect until the date when that appeal is determined or abandoned or deemed to have been abandoned.
- (4) In this section “disqualification order” means an order under section 145.

#### *General*

#### **147 General interpretation.**

- (1) In this Act—
- “the 1990 Act” means the <sup>M13</sup>Broadcasting Act 1990;
- “the BBC” means the British Broadcasting Corporation.
- (2) The 1990 Act and the following provisions of this Act—
- (a) Parts I and II and Schedule 1,

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- (b) Part IV,
  - (c) Part V and Schedules 3 and 4, and
  - (d) sections 142 to 146,
- shall be construed as if those provisions were contained in that Act.

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

**C16** S. 147(1) extended (with modifications) (22.8.1997): to Guernsey by S.I. 1997/1755, art. 2, **Sch.**; to the Isle of Man by S.I. 1997/1756, art. 2, **Sch.**; to Jersey by S.I. 1997/1757, art. 2, **Sch.**

**Commencement Information**

**I4** S. 147 wholly in force: S. 147(1) in force at 24.7.1996, see s. 149(1); s. 147(2)(a)(b)(d) in force at 1.10.1996 by S.I. 1996/2120, art. 4, **Sch. 1**; s. 147(2)(c) in force at 1.4.1997 by S.I. 1997/1005, art. 4

**Marginal Citations**

**M13** 1990 c. 42.

**148 Minor and consequential amendments, repeals and revocations.**

- (1) Schedule 10 (which makes minor and consequential amendments) shall have effect.
- (2) The enactments and instruments mentioned in Schedule 11 are hereby repealed or, as the case may be, revoked to the extent specified in the third column of that Schedule.

**Commencement Information**

**I5** S. 148 wholly in force: s. 148 in force for certain purposes at 24.7.1996 see s. 149(1); s. 148 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, **Sch. 1**; s. 148 in force for certain purposes at 1.11.1996 by S.I. 1996/2120, art. 5, **Sch. 2**; s. 148 wholly in force at 1.4.1997 by S.I. 1997/1005, **art. 4**

**149 Commencement and transitional provisions.**

- (1) The following provisions of this Act—
  - (a) paragraphs 7 to 9 of Schedule 2 so far as relating to BBC companies (as defined by section 202(1) of the 1990 Act), and section 73 so far as relating to those paragraphs in their application to such companies,
  - (b) sections 74 to 78,
  - (c) section 80,
  - (d) section 83,
  - (e) sections 88, 90 and 92,
  - (f) Part VI (and Schedules 5 to 8),
  - (g) section 147(1),
  - (h) paragraphs 15 and 19 of Schedule 10 so far as relating to BBC companies (as defined by section 202(1) of the 1990 Act), and section 148(1) so far as relating to those paragraphs in their application to such companies,
  - (i) the entries in Schedule 11 relating to sections 32(9), 45(8) and (9) and 47(11) and (12) of the 1990 Act, and section 148(2) so far as relating to those entries, and

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- (j) this section and section 150,  
 shall come into force on the passing of this Act.
- (2) The other provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) The power to make an order under this section includes power to make such transitional provisions and savings as the Secretary of State considers appropriate.

#### Subordinate Legislation Made

- P2** S. 149(2) power partly exercised (9.8.1996): different dates appointed for specified provisions by [S.I. 1996/2120](#)
- S. 149(2) power partly exercised (21.3.1997): different dates appointed for specified provisions by [S.I. 1997/1005](#)
- S. 149(2) power partly exercised (28.1.1998): 29.1.1998 appointed for specified provisions for specified purposes by [S.I. 1998/188, art. 3](#)

#### 150 Short title and extent.

- (1) This Act may be cited as the Broadcasting Act 1996.
- (2) This Act, except paragraph 27 of Schedule 10, extends to Northern Ireland.
- (3) Section 204(6) of the 1990 Act (power to extend to Isle of Man and Channel Islands) applies to the provisions of this Act amending that Act.
- (4) Her Majesty may by Order in Council direct that any of the other 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.

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

- C17** S. 150(1) extended (with modifications) (22.8.1997): to Guernsey by [S.I. 1997/1755, art. 2, Sch.](#); to the Isle of Man by [S.I. 1997/1756, art. 2, Sch.](#); to Jersey by [S.I. 1997/1757, art. 2, Sch.](#)

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## SCHEDULES

### SCHEDULE 1

Sections 37, 70.

#### MULTIPLEX REVENUE: SUPPLEMENTARY PROVISIONS

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

C18 Sch. 1 applied (*prosp.*) by 1990 c. 42, s. 26(9A) (as inserted by 1996 c. 55, s. 82(3))

### PART I

#### MULTIPLEX REVENUE FOR PURPOSES OF PART I OF THIS ACT

##### *Computation of multiplex revenue*

- 1 (1) It shall be the duty of the Commission to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining—
- (a) the multiplex revenue in relation to a licence holder for the purposes of section 14 for any accounting period, and
  - (b) the share of multiplex revenue attributable to a person in relation to any multiplex service for the purposes of any provision of Part I of this Act—
    - (i) for any accounting period of the holder of the multiplex licence, or
    - (ii) for any year.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Commission shall consult the Secretary of State and the Treasury.
- (4) The Commission shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

##### *Disputes*

- 2 (1) For the purposes of any provision of Part I of this Act—
- (a) the amount of the multiplex revenue in relation to any holder of a multiplex licence for any accounting period of his, or (as the case may be) for any year, or

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- (b) the amount of any payment to be made to the Commission by any person in respect of any such revenue, or of an instalment of any such payment, shall, in the event of a disagreement between the Commission and that person, be the amount determined by the Commission.
- (2) For the purposes of any provision of Part I of this Act the share of multiplex revenue attributable to any person in relation to a multiplex service for any accounting period or (as the case may be) for any year shall, in the event of a disagreement between the Commission and that person, be the amount determined by the Commission.
- (3) No determination of the Commission under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this subparagraph shall prevent the bringing of proceedings for judicial review.

## PART II

### MULTIPLEX REVENUE FOR PURPOSES OF PART II OF THIS ACT

#### *Computation of multiplex revenue*

- 3 (1) It shall be the duty of the Authority to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining—
  - (a) the multiplex revenue in relation to a licence holder for the purposes of section 56 for any accounting period, and
  - (b) the share of multiplex revenue attributable to a person in relation to any national radio multiplex service for the purposes of any provision of Part II of this Act—
    - (i) for any accounting period of the holder of the national radio multiplex licence, or
    - (ii) for any year.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Authority shall consult the Secretary of State and the Treasury.
- (4) The Authority shall—
  - (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
 and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

#### *Disputes*

- 4 (1) For the purposes of any provision of Part II of this Act—
  - (a) the amount of the multiplex revenue in relation to any holder of a national radio multiplex licence for any accounting period of his, or (as the case may be) for any year, or



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- (b) the amount of any payment to be made to the Authority by any person in respect of any such revenue, or of an instalment of any such payment, shall, in the event of a disagreement between the Authority and that person, be the amount determined by the Authority.
- (2) For the purposes of any provision of Part II of this Act the share of multiplex revenue attributable to any person in relation to any national radio multiplex service for any accounting period or (as the case may be) for any year shall, in the event of a disagreement between the Authority and that person, be the amount determined by the Authority.
- (3) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

## SCHEDULE 2

Section 73.

### AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO RESTRICTIONS ON HOLDING OF LICENCES

#### PART I

##### AMENDMENTS OF PART I OF SCHEDULE 2

- 1 (1) In Part I of Schedule 2, paragraph 1 (which contains interpretative provisions) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) before the definition of “advertising agency” there is inserted—
- ““the 1996 Act” means the Broadcasting Act 1996;”,
- (b) for paragraph (a) of the definition of “associate” there is substituted—
- “(a) in relation to a body corporate, shall be construed in accordance with paragraph (1A), and”,
- (c) in paragraph (b) of the definition of “control” for “by virtue of the rules regulating that or any other body” there is substituted “by whatever means and whether directly or indirectly”,
- (d) after the definition of “control” there is inserted—
- ““coverage area”, in relation to a service, shall be construed in accordance with paragraph 3A;
- “digital programme service” has the same meaning as in Part I of the 1996 Act;”,
- (e) after the definition of “local delivery service” there is inserted—
- ““local digital sound programme service” and “national digital sound programme service” have the same meaning as in Part II of the 1996 Act;
- “local radio multiplex service” and “national radio multiplex service” have the same meaning as in Part II of the 1996 Act;”, and
- (f) at the end there is inserted—

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““television multiplex service” means a multiplex service within the meaning of Part I of the 1996 Act.”.

(3) After sub-paragraph (1) there is inserted—

“(1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—

- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
- (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.”

(4) For sub-paragraph (3) there is substituted—

“(3) For the purposes of this Schedule a person controls a body corporate if—

- (a) he holds, or is beneficially entitled to, more than 50 per cent. of the equity share capital in the body, or possesses more than 50 per cent. of the voting power in it, or
- (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body are conducted in accordance with his wishes; or
- (c) he holds, or is beneficially entitled to, 50 per cent. of the equity share capital in that body, or possesses 50 per cent. of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

(3A) For the purposes of sub-paragraph (3)(c)—

- (a) “arrangement” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
- (b) a person shall be treated—
  - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and
  - (ii) as possessing any voting power possessed by such a body corporate.”

(5) Sub-paragraph (4) is omitted.

(6) For sub-paragraph (6) there is substituted—

“(6) In this Schedule any reference to a participant with more than a 20 per cent. interest in a body corporate is a reference to a person who—

- (a) holds or is beneficially entitled to more than 20 per cent. of the shares in that body, or
- (b) possesses more than 20 per cent. of the voting power in that body.

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- (7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—
- (a) to an interest of more than a specified percentage in a body corporate, or
  - (b) to an interest of a specified percentage or more in a body corporate.
- (8) Any reference in this Schedule to a person who is over a particular age is a reference to a person who has attained that age.”

#### Commencement Information

**I6** Sch. 2 para. 1 wholly in force at 1.11.1996; Sch. 2 para. 1 not in force at Royal Assent see s. 149; Sch. 2 para. 1 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

- 2 (1) Paragraph 2 of Part I of Schedule 2 is amended as follows.
- (2) At the beginning of sub-paragraph (1) there is inserted “ Subject to sub-paragraph (1A) ”.
- (3) After sub-paragraph (1) there is inserted—
- “(1A) For the purposes of this Schedule, a person’s holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—
- (a) he holds the shares concerned—
    - (i) as a nominee,
    - (ii) as a custodian (whether under a trust or by a contract), or
    - (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, as defined by section 220(1) of the Companies Act 1985, in respect of the shares concerned, and
  - (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.
- (1B) For the purposes of sub-paragraph (1A)(b)—
- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
  - (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.”

#### Commencement Information

**I7** Sch. 2 para. 2 wholly in force at 1.11.1996; Sch. 2 para. 2 not in force at Royal Assent see s. 149; Sch. 2 para. 2 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

- 3 For paragraph 3 of Part I of Schedule 2 there is substituted—

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- “3 For the purposes of this Schedule the following persons shall be treated as connected with a particular person—
- (a) a person who controls that person,
  - (b) an associate of that person or of a person falling within paragraph (a), and
  - (c) a body which is controlled by that person or by an associate of that person.”

#### Commencement Information

- I8** Sch. 2 para. 3 wholly in force at 1.11.1996; Sch. 2 para. 3 not in force at Royal Assent see s. 149; Sch. 2 para. 3 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

- 4 After paragraph 3 of Part I of Schedule 2 there is inserted—
- “3A (1) In this Schedule “coverage area”—
- (a) in relation to any service licensed by the Commission under Part I of this Act or a television multiplex service licensed by them under Part I of the 1996 Act, means the area of the United Kingdom from time to time determined by the Commission as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine,
  - (b) in relation to any digital programme service which is broadcast by means of a television multiplex service, means the area of the United Kingdom from time to time determined by the Commission as that within which the digital programme service as so broadcast is capable of being received at such a level,
  - (c) in relation to any service licensed by the Authority under Part III of this Act, means the area of the United Kingdom from time to time determined by the Authority as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine, and
  - (d) in relation to any local radio multiplex service licensed by the Authority under Part II of the 1996 Act or any local digital sound programme service which is broadcast by means of such a local radio multiplex service, means the area of the United Kingdom from time to time determined by the Authority as that within which the local radio multiplex service is capable of being received at such a level.
- (2) Where the Commission or the Authority make any determination under this paragraph, they shall—
- (a) publish the determination in such manner as they think fit, and
  - (b) send a copy of it to such persons holding licences granted by them as appear to them to be affected by the determination.
- 3B (1) For the purposes of this Schedule—
- (a) a person who holds a licence to provide digital programme services shall be taken to provide a digital programme service if,

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- under a contract between him and a person who holds a licence to provide a television multiplex service, that person is obliged to broadcast the digital programme service by means of the television multiplex service;
- (b) a person who holds a licence to provide national digital sound programme services shall be taken to provide a national digital sound programme service if, under a contract between him and a person who holds a licence to provide a national radio multiplex service, that person is obliged to broadcast the national digital sound programme service by means of the national radio multiplex service;
- (c) a person who holds a licence to provide local digital sound programme services shall be taken to provide a local digital sound programme service if, under a contract between him and a person who holds a licence to provide a local radio multiplex service, that person is obliged to broadcast the local digital sound programme service by means of the local radio multiplex service.
- (2) For the purposes of this Schedule a person who holds a licence to provide digital programme services, national digital sound programme services or local digital sound programme services shall also be taken to provide a digital programme service, a national digital sound programme service or a local digital sound programme service (as the case may be) if he also holds a relevant multiplex licence and is broadcasting that service under that licence.
- (3) In sub-paragraph (2), “relevant multiplex licence” means—
- (a) in relation to digital programme services, a licence to provide a television multiplex service,
- (b) in relation to national digital sound programme services, a licence to provide a national radio multiplex service, and
- (c) in relation to local digital sound programme services, a licence to provide a local radio multiplex service.”

#### Commencement Information

**I9** Sch. 2 para. 4 wholly in force at 1.11.1996; Sch. 2 para. 4 not in force at Royal Assent see s. 149; Sch. 2 para. 4 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

- 5 In paragraph 4 of Part I of Schedule 2 (affirmative resolution procedure), for “this Schedule” there is substituted “ any provision of this Schedule other than paragraph 7 in Part III ”.

#### Commencement Information

**I10** Sch. 2 para. 5 wholly in force at 1.11.1996; Sch. 2 para. 5 not in force at Royal Assent see s. 149; Sch. 2 para. 5 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

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## PART II

### AMENDMENTS OF PART II OF SCHEDULE 2

- 6 (1) In Part II of Schedule 2, paragraph 1 (general disqualification of non-EEA nationals and bodies having political connections) is amended as follows.
- (2) In sub-paragraph (1), after paragraph (h) there is inserted—
- “(hh) a body corporate which is controlled by a body corporate falling within paragraph (h);”.
- (3) In sub-paragraph (2), the “or” at the end of paragraph (e) is omitted and after paragraph (f) there is inserted—
- “(g) a licence to provide a television multiplex service, a national radio multiplex service or a local radio multiplex service,
- (h) a licence to provide digital additional services (within the meaning of Part I or II of the 1996 Act),
- (i) a licence to provide digital programme services, or
- (j) a licence to provide national or local digital sound programme services.”
- 7 In paragraph 3 of Part II of Schedule 2 (disqualification of publicly-funded bodies for radio service licences), in sub-paragraph (1)(a) for “(other than a local authority)” there is substituted “ (other than a local authority, the Welsh Authority or the BBC) ”.

#### Commencement Information

**I11** Sch. 2 para. 7 wholly in force at 1.11.1996; Sch. 2 para. 7 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 7 in force at 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1

- 8 In paragraph 5 of Part II of Schedule 2 (general disqualification of broadcasting bodies), paragraphs (c) and (d) are omitted.

#### Commencement Information

**I12** Sch. 2 para. 8 wholly in force at 1.11.1996; Sch. 2 para. 8 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 8 in force at 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1

- 9 After paragraph 5 of Part II of Schedule 2 there is inserted—

#### *“ Disqualification of certain companies for certain licences*

- 5A (1) A BBC company, a Channel 4 company or an S4C company is a disqualified person in relation to—
- (a) any licence granted by the Commission to provide regional or national Channel 3 services or Channel 5, and
- (b) any licence granted by the Commission to provide a local delivery service.
- (2) A BBC company is also a disqualified person in relation to any licence granted by the Authority to provide a national, local or restricted service within the meaning of Part III of this Act.

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- (3) The Secretary of State may by order provide that sub-paragraph (1) (b) shall not have effect in relation to any local delivery service of a description specified in the order.”

#### Commencement Information

**I13** Sch. 2 para. 9 wholly in force at 1.10.1996; Sch. 2 para. 9 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 9 in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1

### PART III

#### PROVISIONS SUBSTITUTED FOR PART III OF SCHEDULE 2

10 For Part III of Schedule 2 there is substituted—

#### “PART III

##### RESTRICTIONS TO PREVENT ACCUMULATIONS OF INTERESTS IN LICENSED SERVICES

- 1 (1) In this Part of this Schedule “relevant services” means any such services as are mentioned in sub-paragraphs (2) and (3) and, for the purposes of this Part, relevant services shall (subject to paragraph 9) be divided into the seventeen categories specified in those sub-paragraphs.
- (2) In the case of services licensed by the Commission, the categories are—
- (a) regional and national Channel 3 services and Channel 5;
  - (b) restricted services (within the meaning of Part I of this Act);
  - (c) domestic satellite services;
  - (d) non-domestic satellite services;
  - (e) licensable programme services;
  - (f) additional services (within the meaning of Part I of this Act);
  - (g) television multiplex services;
  - (h) digital programme services; and
  - (i) digital additional services (within the meaning of Part I of the 1996 Act).
- (3) In the case of services licensed by the Authority, the categories are—
- (a) national radio services;
  - (b) local radio services;
  - (c) satellite radio services;
  - (d) licensable sound programme services;
  - (e) additional services (within the meaning of Part III of this Act);
  - (f) national or local radio multiplex services;
  - (g) national or local digital sound programme services; and
  - (h) digital additional services (within the meaning of Part II of the 1996 Act).

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- (4) References in this Part to national, local, restricted or satellite radio services are references to national, local, restricted or satellite services within the meaning of Part III of this Act.

*General limit on the holding of licences to provide television services or interests in bodies corporate holding such licences*

- 2 (1) No one person may, at any time when his audience time in respect of the period of twelve months ending with the last day of the preceding calendar month exceeds 15 per cent. of total audience time in respect of that period—
- (a) hold two or more licences to provide relevant services falling within one or more of the categories specified in paragraph 1(2)(a), (c), (d), (e) or (h),
  - (b) be a participant with a qualifying interest in two or more bodies corporate each of which holds a licence, or two or more licences, to provide services falling within one or more of those categories,
  - (c) hold any licence to provide a relevant service falling within any of those categories and be a participant with a qualifying interest in any body corporate which holds such a licence or two or more such licences,
  - (d) provide a foreign satellite service and either hold any licence to provide a relevant service falling within any of those categories or be a participant with a qualifying interest in a body corporate which holds such a licence or two or more such licences, or
  - (e) hold a licence to provide relevant services falling within the category specified in paragraph 1(2)(h) and provide two or more such services.
- (2) For the purposes of sub-paragraph (1) a person's audience time at any time ("the relevant time") in respect of any period is the aggregate of—
- (a) the audience time attributable in respect of that period to each relevant service falling within any of the categories specified in paragraph 1(2)(a), (c), (d), (e) or (h) provided under a licence held by him at the relevant time,
  - (b) one half of the audience time attributable in respect of that period to any relevant service falling within any of the categories specified in paragraph 1(2)(a), (c), (d), (e) or (h) provided under a licence held by a body corporate which he does not control, but in which he is at the relevant time a participant with a qualifying interest, and
  - (c) the audience time attributable in respect of that period to any foreign satellite service provided by him at the relevant time.
- (3) In this paragraph "foreign satellite service" means any service (other than a non-domestic satellite service) which consists in the transmission of television programmes by satellite, is provided on a frequency other than one allocated to the United Kingdom for broadcasting by satellite and either—



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- (a) appears to the Commission to be intended for general reception in the United Kingdom (whether or not it appears to them to be also intended for general reception elsewhere), or
  - (b) is (to any extent) relayed by a local delivery service.
- (4) References in this paragraph—
- (a) to the audience time attributable to any service in respect of any period, or
  - (b) to total audience time in respect of any period,
- shall be construed in accordance with paragraph 3.
- (5) In this paragraph “qualifying interest” means an interest of more than 20 per cent.
- (6) The Secretary of State may by order amend sub-paragraph (5)—
- (a) by substituting a different percentage for any percentage for the time being specified there, and
  - (b) so as to specify different percentages in relation to licences to provide different services.
- (7) The Secretary of State may by order amend sub-paragraphs (1)(a), (2)(a) and (b) by adding a reference to relevant services falling within the category specified in paragraph 1(2)(b).

*Audience time and total audience time for purposes of paragraph 2*

- 3 (1) For the purposes of paragraph 2—
- (a) the audience time attributable to a service in respect of any period is an estimate by the Commission of the number of hours that would be produced by—
    - (i) ascertaining, in relation to every person who in that period watched any programme included in that service, the total amount of time he spent in that period watching programmes so included, and
    - (ii) adding together all the amounts of time so ascertained, and
  - (b) total audience time in respect of any period is the total of all the audience times attributable to services specified in sub-paragraph (2) in respect of that period.
- (2) The services referred to in sub-paragraph (1)(b) are—
- (a) every television programme service capable of being received in the British Islands, and
  - (b) every other service which consists wholly or mainly in the broadcasting, or transmission by satellite, from a place outside the British Islands of television programmes which are capable of being received in the British Islands.
- (3) For the purposes of this paragraph the Commission may disregard—
- (a) watching in such circumstances, or by persons of such description, as the Commission may from time to time determine,

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- (b) periods of watching whose duration does not exceed such length of time as they may so determine, and
  - (c) the watching of recordings of television programmes to such extent as they may so determine.
- (4) Any estimate required for the purposes of this paragraph may be made by the Commission in such manner, or by reference to such surveys conducted or statistics prepared by any one or more other persons, as they think fit.
- (5) Any determination made by the Commission under sub-paragraph (4) shall be published by them in such manner as they think fit.
- (6) In this paragraph—
- (a) “programme” includes part of a programme, and
  - (b) references to watching a programme do not include references to watching it outside the British Islands.
- (7) If it appears to the Secretary of State that there has been a significant change in the audience measurement practices prevailing in the television industry, the Secretary of State may, after consulting the Commission, make such amendments of sub-paragraphs (1), (3) and (6) as he considers appropriate for the purpose of taking account of that change.

*Restrictions on holding of licences to provide Channel 3 services or Channel 5*

- 4
- (1) No one person may at any time hold a licence to provide a national Channel 3 service and a licence to provide Channel 5.
  - (2) A person who holds a licence to provide a regional Channel 3 service for a particular area may not also hold any other licence to provide a regional Channel 3 service for that area.

*Limit on the holding of licences to provide television multiplex services*

- 5
- (1) No one person may at any time hold more than three licences to provide television multiplex services.
  - (2) For the purposes of sub-paragraph (1), a person who is a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a television multiplex service but does not control that body shall be treated as holding the licence held by that body.
  - (3) No one person may at any time, in relation to each of five or more licences to provide television multiplex services, be either the holder of the licence or a participant with more than a 10 per cent. interest in a body corporate which holds the licence.
  - (4) In relation to any person who, under any arrangement with the BBC, provides a television multiplex service for the BBC (on a frequency which is not assigned to the Commission under section 6(1) of the 1996 Act)—
    - (a) sub-paragraph (1) shall have effect as if the reference to three licences were a reference to two licences, and

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- (b) sub-paragraph (3) shall have effect as if the reference to five licences were a reference to four licences.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraphs (1) to (4) by substituting a different numerical limit or percentage for any numerical limit or percentage for the time being specified there,
  - (b) designate any television multiplex service as a regional multiplex service for the purposes of this sub-paragraph, and
  - (c) prescribe restrictions on the holding by any one person of two or more licences to provide regional multiplex services whose coverage areas are to a significant extent the same.
- (6) The Secretary of State shall not designate any television multiplex service as a regional television multiplex service for the purposes of sub-paragraph (5) unless less than half of the population of the United Kingdom is resident within the proposed coverage area of the service.

*Limits on the holding, by persons providing digital programme services, of licences to provide other categories of service*

- 6
- (1) The Secretary of State may by order prescribe restrictions on the holding, by a person who is providing a digital programme service by means of a television multiplex service designated by order under paragraph 5(5) (b) as a regional multiplex service, of a licence to provide any service specified in sub-paragraph (2) whose coverage area is to a significant extent the same as that of the digital programme service.
  - (2) The services referred to in sub-paragraph (1) are—
    - (a) a regional Channel 3 service,
    - (b) a local radio service, and
    - (c) a local radio multiplex service.
  - (3) The Secretary of State may also by order prescribe restrictions on the provision by any one person at any time of both—
    - (a) a digital programme service by means of a television multiplex service which is designated by order under paragraph 5(5)(b) as a regional multiplex service, and
    - (b) a digital sound programme service whose coverage area is to a significant extent the same as that of the digital programme service.

*Limit in relation to provision of digital programme services*

- 7
- (1) No person holding a licence to provide digital programme services may, at any time before such day as the Secretary of State may by order appoint for the purposes of this paragraph, provide digital programme services by means of two or more television multiplex services if the number of points attributable to those digital programme services (calculated in accordance with this paragraph) exceeds the permitted maximum.

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(2) Subject to sub-paragraphs (3) to (5), the number of points attributable to any digital programme service is two.

(3) Where—

- (a) the population within the coverage area of a digital programme service is less than half of the population within the coverage area of the television multiplex service by means of which it is provided, or
- (b) a digital programme service is provided by means of a television multiplex service designated by the Secretary of State by order under paragraph 5(5)(b) as a regional multiplex service, or
- (c) average weekly air time in relation to a digital programme service is at least 12 hours but less than 50 hours, or
- (d) in the case of a digital programme service which was first provided after the beginning of the relevant period, the applicant has notified the Commission of his intention to provide a service in relation to which average weekly air time will be at least 12 hours but less than 50 hours,

the number of points attributable to that digital programme service is one.

(4) Subject to sub-paragraph (5), where—

- (a) average weekly air time in relation to a digital programme service is less than 12 hours, or
- (b) in the case of a digital programme service which was first provided after the beginning of the relevant period, the applicant has notified the Commission of his intention to provide a service in relation to which average weekly air time will be less than 12 hours,

no points are attributable to that digital programme service.

(5) Where the average weekly air time in relation to each of two or more digital programme services (“the relevant services”) provided by any one holder of a licence to provide digital programme services is less than 12 hours, the relevant services shall be treated for the purposes of this paragraph as if they were one service with an average weekly air time equal to the aggregate of the average weekly air times in relation to the relevant services.

(6) For the purposes of sub-paragraphs (3) to (5), as they have effect in relation to the operation of sub-paragraph (1) at any time—

- (a) “the relevant period” means the period of 13 weeks ending with the last week falling wholly within the previous calendar month, and
- (b) “average weekly air time”, in relation to a digital programme service, means the average number of hours per week for which the service has been broadcast during the relevant period;

and in this sub-paragraph “week” means a week ending with Saturday.

(7) The permitted maximum shall be determined by reference to the total number of points attributable to all digital programme services

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being provided by the holders of licences to provide such services, as follows—

- (a) where the total number of points is not more than 10, the permitted maximum is 2,
  - (b) where the total number of points is more than 10 but less than 24, the permitted maximum is 4, and
  - (c) where the total number of points is 24 or more, the permitted maximum is one quarter of that total.
- (8) For the purposes of this paragraph a person who holds a licence to provide digital programme services and is a participant with more than a 20 per cent. interest in a body corporate which also holds such a licence, but who does not control that body, shall be taken to provide any digital programme services provided by that body.
- (9) The Secretary of State may by order amend this paragraph—
- (a) by altering the number of points for the time being attributable to digital programme services falling within sub-paragraph (2), (3) or (4),
  - (b) by substituting a different number of hours for the number for the time being specified in sub-paragraph (3), (4) or (5),
  - (c) by substituting different numbers for any numbers for the time being specified in sub-paragraph (7), and
  - (d) by substituting a different percentage for the percentage for the time being specified in sub-paragraph (8).
- (10) An order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Limits in relation to licences to provide radio services*

- 8 (1) No one person may, at any time before such day as the Secretary of State may by order appoint for the purposes of this paragraph (in this paragraph referred to as “the appointed day”) hold two or more licences to provide services falling within one or more of the categories specified in paragraph 1(3)(a) or (b) such that the total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to all such services in respect of which licences are in force or have been awarded.
- (2) No one person may, at any time on or after the appointed day—
- (a) hold two or more licences to provide services falling within one or more of the categories specified in paragraph 1(3)(a), (b) or (g) such that the total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to—
    - (i) all national or local radio services in respect of which licences are in force or have been awarded, and
    - (ii) all national or local digital sound programme services which are being provided, or

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- (b) hold a licence to provide services falling within the category specified in paragraph 1(3)(g) and provide two or more services falling within that category such that the total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to all the services referred to in paragraph (a)(i) or (ii).

- (3) Before making an order appointing a day for the purposes of this paragraph, the Secretary of State shall consult the Authority.

*Calculation of points for purposes of paragraph 8*

- 9 (1) For the purposes of paragraph 8, to the categories of national or local radio services and national or local digital sound programme services set out in the Table below there shall be attributed points according to that Table.

TABLE

<i>Category of service</i>	<i>Points</i>
National radio service or national digital sound programme service	25
Category A local radio service or Category A local digital sound programme service	15
Category B local radio service or Category B local digital sound programme service	8
Category C local radio service or Category C local digital sound programme service	3
Category D local radio service or Category D local digital sound programme service	1

- (2) For the purposes of the Table a local radio service or local digital sound programme service falls—
- (a) into category A if the number of persons over the age of 15 resident in the coverage area of that service exceeds 4.5 million;
  - (b) into category B if the number of such persons exceeds 1 million but does not exceed 4.5 million;
  - (c) into category C if the number of such persons exceeds 400,000 but does not exceed 1 million; and
  - (d) into category D if the number of such persons does not exceed 400,000.
- (3) No points shall be attributed to a national or local digital sound programme service unless the service is being provided.

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- (4) In the case of a national or local radio service provided on an amplitude modulated (AM) frequency the relevant number of points attributable to the service by virtue of the Table shall be reduced by one third.
- (5) A service which, on the day on which the licence to provide it is granted, falls into a particular category for the purposes of the Table shall continue to be regarded as falling into that category so long as any increase or decrease in the relevant number of persons over the age of 15 (which would otherwise take the service outside that category) does not exceed 10 per cent.
- (6) A person who is a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a national or local radio service, but who does not control that body, shall for the purposes of paragraph 8 be treated as the holder of a licence to provide a national or local service to which one half of the points which would otherwise be attributable to such a service are attributed.
- (7) A person who is a participant with more than a 20 per cent. interest in a body corporate which provides a national or local digital sound programme service, but who does not control that body, shall for the purposes of paragraph 8 be treated as providing a national or local digital sound programme service to which one half of the points which would otherwise be attributable to such a service are attributed.

*Power to amend paragraphs 8 and 9*

- 10 (1) The Secretary of State may by order make such amendments of paragraphs 8 and 9 as he thinks fit for the purposes of including restricted radio services among the services referred to in any provision of paragraph 8 and of providing for the calculation of the points to be attributed to any such service, or any category of such service.
- (2) The Secretary of State may by order amend paragraph 9—
  - (a) by substituting different categories for the categories for the time being set out in the Table in sub-paragraph (1) and in sub-paragraph (2) or adding further categories,
  - (b) by substituting a different number of points for the number of points for the time being attributed to each category,
  - (c) by substituting different population figures for those for the time being specified in sub-paragraph (2),
  - (d) by substituting a different age for the age for the time being specified in sub-paragraph (2)(a) and (5),
  - (e) by substituting a different fraction for the fraction for the time being specified in sub-paragraph (4) or repealing that sub-paragraph, or
  - (f) by substituting a different percentage for the percentage for the time being specified in sub-paragraphs (6) and (7) in relation to an interest in a body corporate or a different fraction for the fraction for the time being specified in those sub-paragraphs in relation to the points to be attributed to a person falling within either of those sub-paragraphs.

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*Limits in relation to licences to provide national radio services,  
radio multiplex services or digital sound programme services*

- 11 (1) No one person may at any time hold more than one licence to provide a national radio service.
- (2) No one person may at any time—
- (a) hold more than one licence to provide a national radio multiplex service, or
  - (b) hold a licence to provide national digital sound programme services and provide more than one national digital sound programme service.
- (3) For the purposes of sub-paragraph (2)(a) a person who is a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a radio multiplex service but does not control that body shall be treated as holding the licence held by that body.
- (4) No one person may at any time—
- (a) hold a licence to provide a radio multiplex service and be a participant with more than a 10 per cent. interest in more than one body corporate which holds any other such licence, or
  - (b) be a participant with more than a 10 per cent. interest in each of three or more bodies corporate which hold such licences.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraph (1), (2) or (4) by substituting a different numerical limit for any numerical limit for the time being specified there, and
  - (b) amend sub-paragraph (3) or (4) by substituting a different percentage for any percentage for the time being specified there.

*Limits in relation to licences to provide local radio services in overlapping areas*

- 12 (1) No one person may at any time hold any two licences to provide local radio services which share a potential audience unless either—
- (a) one of the licences is an AM licence and the other is an FM licence, or
  - (b) the Authority have determined that in all the circumstances, having regard to the matters specified in sub-paragraph (4), the holding by that person of the licences in question could not be expected to operate against the public interest within the area concerned.
- (2) No one person may at any time hold any three licences to provide local radio services any of which shares a potential audience with each of the other two services unless—
- (a) the licences include both an AM licence and an FM licence, and
  - (b) the Authority have determined that in all the circumstances, having regard to the matters specified in sub-paragraph (4), the holding by that person of the licences in question could not be



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expected to operate against the public interest within the area concerned.

- (3) No one person may at any time hold any four or more licences to provide local radio services any of which shares a potential audience with each of the other services.
- (4) The matters referred to in sub-paragraphs (1) and (2) are—
- (a) any reduction in plurality of ownership of local radio services within the area concerned that would result from a decision to allow the licences to be held together, and
  - (b) the likely effect of such a decision on—
    - (i) the range of programmes available by way of independent radio services to persons living in the area concerned, and
    - (ii) diversity in the sources of information available to the public in the area concerned and in the opinions expressed on local radio services received in that area.
- (5) For the purposes of this paragraph two local radio services share a potential audience if, but only if, the potential audience of one service includes more than half of the potential audience of the other service.
- (6) This paragraph has effect subject to paragraph 13.
- (7) In this paragraph—
- “AM licence” means a licence to provide a local radio service on an amplitude modulated frequency,
- “FM licence” means a licence to provide such a service on a frequency modulated frequency, and
- “potential audience”, in relation to a local radio service, means the persons over the age referred to in paragraph 9(2)(a) who reside in the coverage area of that service.

*Power by order to impose different restrictions in place of paragraph 12*

- 13 The Secretary of State may by order provide that, where a digital sound programme service is provided in any area, the holding by any one person of two or more licences to provide in that area local radio services which for the purposes of paragraph 12 share a potential audience with each other or with each of the others shall, instead of being subject to the restrictions specified in paragraph 12, be subject to other restrictions specified in the order.

*Limits in relation to provision of local digital sound programme services*

- 14 (1) Subject to sub-paragraph (2), no one person holding a licence to provide local digital sound programme services may at any time provide more than one non-simulcast service by means of a particular local radio multiplex service.
- (2) Where—

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- (a) the coverage area of the local radio multiplex service is to a significant extent the same as that of another local radio multiplex service, and
  - (b) the person concerned is not providing any non-simulcast service by means of that other local radio multiplex service,
- sub-paragraph (1) shall have effect as if the reference to one non-simulcast service were a reference to two such services.
- (3) In this paragraph “non-simulcast service” means any local digital sound programme service other than one which—
- (a) is provided by a person who holds a licence to provide a local radio service, and
  - (b) corresponds to that local radio service.
- (4) For the purposes of sub-paragraph (3)(b) a local digital sound programme service corresponds to a local radio service if, and only if, in every calendar month—
- (a) at least 80 per cent. of so much of the local radio service as consists of programmes, consists of programmes which are also included in the local digital sound programme service in that month, and
  - (b) at least 50 per cent. of so much of the local radio service as consists of such programmes is broadcast at the same time on both services.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraphs (1) and (2) by substituting a different numerical limit for any numerical limit for the time being specified there, and
  - (b) amend sub-paragraph (4)(a) or (b) by substituting a different percentage for any percentage for the time being specified there.
- (6) In subsection (4) “programme” does not include an advertisement.

*Further restrictions on holding of licences of different descriptions*

- 15 (1) No one person may at any time hold—
- (a) a licence to provide a national Channel 3 service or Channel 5, and
  - (b) a licence to provide a national radio service.
- (2) No one person may at any time hold—
- (a) a licence to provide a local radio service or local digital sound programme services, and
  - (b) a licence to provide a regional Channel 3 service whose coverage area is to a significant extent the same as that of the local radio service or of any local digital sound programme service provided by him.

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*Power to impose additional limits in relation to  
licences to provide television or radio services*

- 16 (1) The Secretary of State may, in the case of—
- (a) any category of relevant services specified in paragraph 1(2)(b), (c), (d) or (f), or
  - (b) any category of relevant services specified in paragraph 1(3)(c) or (e),
- by order prescribe the maximum number of licences which may at any time be held by any one person to provide relevant services falling within that category.
- (2) The Secretary of State may by order impose, in relation to any category of relevant services specified in paragraph 1(2)(a) or (b) or paragraph 1(3)(a), (b) or (f) or under sub-paragraph (1), limits on the holding of licences to provide relevant services falling within that category which are additional to the limits specified in paragraphs 2 to 15 or under that sub-paragraph and are framed—
- (a) by reference to any specified circumstances relating to the holders of the licences in question or to the services to be provided under them, or
  - (b) (in the case of licences granted by the Commission) by reference to matters determined by them under the order.
- (3) Without prejudice to the generality of sub-paragraph (2), an order made under that sub-paragraph may impose on the holder of a licence to provide any specified category of relevant services specified in paragraph 1(3) limits framed (directly or indirectly) by reference to either or both of the following matters, namely—
- (a) the number of licences of any one or more specified descriptions which are held by him or by any body controlled by him; and
  - (b) his participation, to any specified extent, in any body corporate which is the holder of any licence or licences of any one or more such descriptions.
- (4) Where a person holds—
- (a) a licence to provide a domestic satellite service,
  - (b) a licence to provide a non-domestic satellite service, or
  - (c) a licence to provide a satellite radio service,
- which, in accordance with section 44(2), 45(3) or 86(2), authorises the provision of a multichannel service, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences to provide domestic satellite services, non-domestic satellite services or (as the case may be) satellite radio services as corresponds to the number of channels on which the service may be provided.
- (5) In sub-paragraph (4)—
- (a) “multichannel service” means a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies; and

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- (b) any reference to the number of channels on which such a service may be provided is a reference to the number of different frequencies involved.
- (6) Where a person who holds a licence to provide any of the services specified in sub-paragraph (4)(a), (b) or (c) provides that service by broadcasting two or more programmes simultaneously in digital form on a single frequency, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences as corresponds to the number of programmes that are simultaneously transmitted.

#### *Connected persons*

- 17 (1) Subject to sub-paragraph (2), for the purposes of—
- (a) paragraphs 2 to 15, and
  - (b) any order under paragraph 13 or 16(1) or (2),
- a person shall be treated as holding a licence if the licence is held by a person connected with him and shall be treated as providing a service if the service is provided by a person connected with him.
- (2) For the purposes of paragraph 12 and any order under paragraph 13, a person shall not be treated as holding a licence to provide a local radio service merely because he is a director of a body corporate which holds the licence.
- (3) Any provision of paragraphs 2 to 14 which refers to a person's participation in a body corporate shall have effect as if he and every person connected with him were one person.”

#### **Commencement Information**

**I14** Sch. 2 para. 10 wholly in force at 1.4.1997; Sch. 2 para. 10 not in force at Royal Assent see s. 149; Sch. 2 para. 10 in force for certain purposes at 1.11.1996 by S.I. 1996/2120 art. 4, Sch. 1; Sch. 2 para. 10 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

## **PART IV**

### PROVISIONS SUBSTITUTED FOR PART IV OF SCHEDULE 2

11 For Part IV of Schedule 2 there is substituted—

#### **“PART IV**

#### RESTRICTIONS ON CONTROLLING INTERESTS IN BOTH NEWSPAPERS AND LICENSED SERVICES

#### *Meaning of “relevant authority”*

1 In this Part of this Schedule “the relevant authority”—

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- (a) in relation to any restriction having effect in relation to any licence which has been or may be granted by the Commission, means the Commission, and
- (b) in relation to any restriction having effect in relation to any licence which has been or may be granted by the Authority, means the Authority.

*National and local newspapers and their  
respective national and local market shares*

- 2
- (1) In this Part of this Schedule references to a national or local newspaper are (subject to sub-paragraph (3)) references to a national or local newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.
  - (2) Where a newspaper is published in different regional editions on the same day, the relevant authority may determine, having regard to all the circumstances, whether those regional editions are to be treated for the purposes of this Part of this Schedule as constituting one national newspaper, two or more local newspapers or one national newspaper and one or more local newspapers.
  - (3) The relevant authority may determine that a newspaper which would otherwise be neither a national nor a local newspaper for the purposes of this Part of this Schedule shall be treated as a national or (as the case may be) a local newspaper for the purposes of any particular restriction imposed by or under this Part of this Schedule if it appears to them to be appropriate for the newspaper to be so treated having regard to its circulation or influence in the United Kingdom or (as the case may be) in a part of the United Kingdom.
  - (4) For the purposes of this Part of this Schedule, the “national market share” of any national newspaper at any time in a calendar month is the total number of copies of that newspaper sold in the United Kingdom in the six months ending with the last day of the previous month, expressed as a percentage of the total number of copies of all national newspapers sold in the United Kingdom in those six months.
  - (5) For the purposes of this Part of this Schedule, the “local market share” of any local newspaper in any area at any time in a calendar month is the total number of copies of that newspaper sold in that area in the six months ending with the last day of the previous month, expressed as a percentage of the total number of copies of all local newspapers sold in that area in those six months.
  - (6) For the purposes of sub-paragraphs (4) and (5), the relevant authority may estimate the numbers of copies of any newspaper sold in the United Kingdom, or in any area, during any period in such manner, or by reference to such statistics prepared by any other person, as they think fit.
  - (7) In relation to any newspaper which is distributed free of charge rather than being sold, references in sub-paragraphs (4) to (6) to the number of copies sold shall have effect as references to the number of copies distributed.

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*Other interpretative provisions*

- 3 (1) For the purposes of this Part of this Schedule a person runs a national or local newspaper if—
- (a) he is the proprietor of the newspaper, or
  - (b) he controls a body which is the proprietor of the newspaper.
- (2) Paragraph 1(4) in Part III of this Schedule shall have effect for the purposes of this Part of this Schedule as it has effect for the purposes of Part III.

*Restrictions on common control etc.*

- 4 (1) No person who runs a national newspaper which for the time being has, or national newspapers which for the time being together have, a national market share of 20 per cent. or more may hold a licence to provide—
- (a) a regional or national Channel 3 service or Channel 5, or
  - (b) a national or local radio service.
- (2) A licence to provide a regional Channel 3 service may not be held by a person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in the coverage area of the service.
- (3) A licence to provide digital programme services may not be held by a person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in the coverage area of any digital programme service provided under the licence.
- (4) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.

*Restrictions on participation*

- 5 (1) No proprietor of a national newspaper which for the time being has, or of national newspapers which for the time being together have, a national market share of 20 per cent. or more shall be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide any of the services specified in sub-paragraph (4).
- (2) No person who is the holder of a licence to provide any of the services specified in sub-paragraph (4) shall be a participant with more than a 20 per cent. interest in a body corporate which runs a national newspaper which has, or two or more national newspapers which together have, a national market share of 20 per cent. or more.
- (3) No body corporate in which a person who runs a national newspaper which has, or national newspapers which together have, a national market share of 20 per cent. or more is a participant with more than a 20 per cent. interest, shall be a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide any of the services specified in sub-paragraph (4).

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- (4) The services referred to in sub-paragraphs (1), (2) and (3) are—
  - (a) a regional or national Channel 3 service or Channel 5, and
  - (b) national or local radio services.
- (5) The Secretary of State may by order amend sub-paragraph (1), (2) or (3) by substituting a different percentage interest in a body corporate for the percentage for the time being specified there.
- (6) Any restriction imposed by this paragraph on participation in a body corporate which is the holder of a particular kind of licence shall apply equally to participation in a body corporate which controls the holder of such a licence.
- (7) Any restriction on participation imposed by this paragraph—
  - (a) on the proprietor of any newspaper, or
  - (b) on the holder of any licence,
 shall apply as if he and every person connected with him were one person.

*Holding of local radio licence by person running local newspapers with at least 50 per cent local market share*

- 6 (1) A licence to provide a local radio service may not be held by a person who runs a local newspaper which has, or local newspapers which for the time being together have, a local market share of 50 per cent. or more in the coverage area of the service unless—
  - (a) the service in question shares a potential audience with another local radio service, but
  - (b) he does not hold any other licence to provide a local radio service whose coverage area is to any extent the same as the coverage area of the service in question.
- (2) The reference in sub-paragraph (1) to sharing a potential audience shall be construed in accordance with paragraph 12(5) in Part III of this Schedule.
- (3) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.

*Further restrictions on holding of local radio licences by a person who runs a local newspaper*

- 7 (1) No person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in each of the relevant areas may hold any three licences to provide local radio services any of which shares a potential audience with each of the other services.
- (2) No person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in both the relevant areas may hold any two licences to provide local radio services which share a potential audience,

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unless one of the licences is an AM licence and the other is an FM licence.

- (3) In sub-paragraphs (1) and (2)—
- (a) “the relevant areas” means the coverage areas of the local radio services in question,
  - (b) references to sharing a potential audience shall be construed in accordance with sub-paragraph (5) of paragraph 12 in Part III of this Schedule, and
  - (c) “AM licence” and “FM licence” have the same meaning as in that paragraph.
- (4) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.
- (5) This paragraph has effect subject to paragraph 8.

*Power by order to impose different restrictions in place of paragraph 7*

- 8 (1) The Secretary of State may by order provide that, where a digital sound programme service is provided in any area, the holding, by a person who runs a local newspaper or local newspapers as mentioned in paragraph 7(1), of two or more licences to provide in that area local radio services which for the purposes of paragraph 7 share a potential audience with each other or with each of the others shall, instead of being subject to the restrictions specified in paragraph 7, be subject to other restrictions specified in the order.
- (2) For the purposes of any order under sub-paragraph (1), a person shall be treated as holding a licence if the licence is held by a person connected with him.

*Additional restrictions applying where control of or by newspaper proprietor may operate against public interest*

- 9 (1) A licence to provide any of the services specified in sub-paragraph (4) may not be granted to a body corporate which is, or is connected with, the proprietor of a national or local newspaper if the relevant authority determine that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.
- (2) Subject to sub-paragraph (3), a body corporate which holds a licence to provide any of the services specified in sub-paragraph (4) shall not become, or become connected with, the proprietor of a national or local newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
- (3) Sub-paragraph (2) does not apply in any case where the body corporate holding the licence—
- (a) is already the proprietor of some other national or local newspaper, or is already connected with such a proprietor, and



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- (b) does not become connected with any other person who holds a licence to provide any of the services specified in sub-paragraph (4).
  - (4) The services referred to in sub-paragraphs (1) to (3) are—
    - (a) a national Channel 3 service or Channel 5,
    - (b) a national radio service, and
    - (c) national digital sound programme services.
  - (5) Subject to sub-paragraph (6), in this paragraph “the permitted period” means a period beginning with the day on which the licence holder becomes, or becomes connected with, the proprietor of the national or local newspaper (“the relevant day”) and ending—
    - (a) in a case where the licence holder has, before the relevant day, notified the relevant authority that he will become, or become connected with, the proprietor of that national or local newspaper on that day, at the end of the period of three months beginning with the relevant day, or
    - (b) in any other case, at the end of the period of three months beginning with the day on which the licence holder notifies the relevant authority that he has become, or has become connected with, the proprietor of that national or local newspaper.
  - (6) The relevant authority may in a particular case, after consultation with the licence holder, notify him, before the time when the permitted period would (apart from this sub-paragraph) have ended, that the permitted period in that case is to be calculated as if the references in sub-paragraph (5) to three months were references to such longer period specified in the notification as the relevant authority reasonably consider necessary in the circumstances.
  - (7) Nothing in any of the preceding provisions of this Schedule shall be construed as affecting the operation of this paragraph or paragraph 10 or 11.
- 10
- (1) A licence to provide a regional Channel 3 service or a local radio service may not be granted to a body corporate which is, or is connected with, the proprietor of a national newspaper or a relevant local newspaper if the relevant authority determine that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.
  - (2) Subject to sub-paragraph (3), a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service shall not become, or become connected with, the proprietor of a national newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
  - (3) Sub-paragraph (2) does not apply in any case where the body corporate holding the licence—
    - (a) is already the proprietor of some other national newspaper or is already connected with such a proprietor, and

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- (b) does not become connected with—
  - (i) any other person who holds a licence to provide a regional Channel 3 service or a local radio service, or
  - (ii) any person who holds a licence to provide digital programme services and is providing a service under that licence.
  
- (4) Subject to sub-paragraph (5), a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service shall not become, or become connected with, the proprietor of a relevant local newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
  
- (5) Sub-paragraph (4) does not apply in any case where the body corporate which holds the licence—
  - (a) is already the proprietor of some other local newspaper which is a relevant local newspaper in relation to the service referred to in that sub-paragraph, or is already connected with such a proprietor, and
  - (b) does not become connected with—
    - (i) any other person who holds a licence to provide a regional Channel 3 service or local radio service in relation to which that other local newspaper is also a relevant local newspaper, or
    - (ii) any person who holds a licence to provide digital programme services and is providing a service under that licence in relation to which that other local newspaper is also a relevant local newspaper.
  
- (6) For the purposes of this paragraph a local newspaper is a “relevant local newspaper”, in relation to any service, if it serves an area which is to a significant extent the same as the coverage area of the service.
  
- (7) In this paragraph “the permitted period” has the meaning given by paragraph 9(5) and (6).
  
- 11 (1) A body corporate which holds a licence to provide digital programme services and is, or is connected with, the proprietor of a national newspaper or a relevant local newspaper, shall not begin to provide a digital programme service if the Commission determine before the end of the period specified in sub-paragraph (2) that in all the circumstances the provision of that service by that body corporate could be expected to operate against the public interest.
  
- (2) The period referred to in sub-paragraph (1) is the period of three months beginning with the day on which the Commission are notified pursuant to section 19(3) of the 1996 Act of an agreement to provide the digital programme service, or such longer period beginning with that day as the Commission may in a particular case, after consultation with the licence holder, notify him during those three months as being the period which they reasonably consider necessary in the circumstances.

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- (3) Subject to sub-paragraph (4), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a national newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.
- (4) Sub-paragraph (3) does not apply in any case where the body corporate which is providing the digital programme service—
- (a) is already the proprietor of some other national newspaper or is already connected with such a proprietor, and
  - (b) does not become connected with—
    - (i) the holder of a licence to provide a regional Channel 3 service or a local radio service, or
    - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence.
- (5) Subject to sub-paragraph (6), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a relevant local newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.
- (6) Sub-paragraph (5) does not apply in any case where the body corporate which is providing the digital programme service—
- (a) is already the proprietor of some other local newspaper which is a relevant local newspaper in relation to the service referred to in that sub-paragraph, or is already connected with such a proprietor, and
  - (b) does not become connected with—
    - (i) the holder of a licence to provide a regional Channel 3 service or local radio service in relation to which that other local newspaper is also a relevant local newspaper, or
    - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence in relation to which that other local newspaper is also a relevant local newspaper.
- (7) In this paragraph—
- (a) references to a relevant local newspaper shall be construed in accordance with paragraph 10(6), and
  - (b) “the permitted period” has the meaning given by paragraph 9(5) and (6).
- 12 (1) Notice may be given to the relevant authority in accordance with this paragraph of proposed arrangements which might result—

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- (a) in the application of paragraph 9(2) to a body corporate which holds a licence to provide any of the services specified in paragraph 9(4),
  - (b) in the application of paragraph 10(2) or (4) to a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service, or
  - (c) in the application of paragraph 11(1), (3) or (5) to a body corporate which holds a licence to provide digital programme services.
- (2) A notice under sub-paragraph (1)—
- (a) may be given by the licence holder or any other person appearing to the relevant authority to be concerned,
  - (b) shall state that the existence of the proposal has been made public, and
  - (c) shall be in such form as the relevant authority may require.
- (3) The relevant authority may, at any time before making a determination under this paragraph, require the person who gave the notice to provide them with such further information with respect to the notified arrangements as they think fit.
- (4) The relevant authority shall, as soon as reasonably practicable, determine whether in all the circumstances, if the notified arrangements were carried into effect, the continued holding of the licence by the body corporate could be expected to operate against the public interest.
- (5) If—
- (a) the relevant authority determine, in relation to any notified arrangements, that the fact referred to in sub-paragraph (4) could not be expected to operate against the public interest, and
  - (b) the notified arrangements are carried into effect within the period of 12 months beginning with the date of the determination,
- the relevant authority may not make any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) arising out of the carrying into effect of the notified arrangements.
- (6) Sub-paragraph (5) does not prevent any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) being made if—
- (a) any information given to the relevant authority in respect of the notified arrangements by the person who gave the notice is in any material respect false or misleading, or
  - (b) since the making of the determination there has been a material change of circumstances (other than such a change of which notice was given to the relevant authority under sub-paragraph (3) before the making of the determination).
- (7) In this paragraph “the notified arrangements” means the arrangements mentioned in the notice under sub-paragraph (1) or arrangements not differing from them in any material respect.

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- 13 (1) The matters to which the relevant authority shall have regard in determining, for the purposes of paragraph 9, 10, 11 or 12, whether the holding of a licence by a body corporate which is, or is connected with, the proprietor of a newspaper operates, or could be expected to operate, against the public interest include—
- (a) the desirability of promoting—
    - (i) plurality of ownership in the broadcasting and newspaper industries, and
    - (ii) diversity in the sources of information available to the public and in the opinions expressed on television or radio or in newspapers,
  - (b) any economic benefits (such as, for example, technical development or an increase in employment or in the value of goods or services exported) that might be expected to result from the holding of the licence by that body but could not be expected to result from the holding of the licence by a body corporate which was not, and was not connected with, the proprietor of a newspaper, and
  - (c) the effect of the holding of the licence by that body on the proper operation of the market within the broadcasting and newspaper industries or any section of them.
- (2) References in paragraphs 9, 10, 11 and 12 to the public interest include references to the public interest within any area of the United Kingdom.
- 14 In relation to any determination under paragraph 11(1), (3) or (5), references in paragraphs 12 and 13 to the holding of the licence shall have effect as references to the provision of the service.

#### *Restricted television services*

- 15 (1) The Secretary of State may by order—
- (a) prescribe restrictions on the holding of one or more licences to provide restricted television services by a person who runs a national or local newspaper, and
  - (b) apply any of the provisions of paragraphs 9 to 13, with such modifications as may be specified in the order, in relation to the holding of a licence to provide a restricted television service.
- (2) Any order under sub-paragraph (1) may provide that, for the purposes of any provision of the order, a person is to be treated as holding a licence if the licence is held by a person connected with him.
- (3) In this paragraph “restricted television service” means a restricted service within the meaning of Part I of this Act.”

#### **Commencement Information**

**I15** Sch. 2 para. 11 wholly in force at 1.4.1997; Sch. 2 para. 11 not in force at Royal Assent see s. 149; Sch. 2 para. 11 in force for certain purposes at 10.8.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 2 para. 11 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

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## PART V

### AMENDMENTS OF OTHER PROVISIONS OF 1990 ACT

- 12 (1) Section 5 of the 1990 Act (restrictions on the holding of licences) is amended as follows.
- (2) For subsection (6) there is substituted—
- “(6) The Commission shall not serve any such notice on the licence holder unless—
- (a) the Commission have notified him of the matters complained of 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 Parts III and IV of Schedule 2 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—
- (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2;
- (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule);
- (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (6B) Where a licence has been granted in a case where the Commission could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Commission would have made such a determination in the new circumstances of the case.”
- (3) In subsection (7)—
- (a) after paragraph (b) there is inserted—
- “or
- (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,” and
- (b) for “(in either case)” there is substituted “ (in any case) ”.
- 13 (1) Section 88 of the 1990 Act (restrictions on the holding of licences) is amended as follows.
- (2) For subsection (6) there is substituted—

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- “(6) The Authority shall not serve any such notice on the licence holder unless—
- (a) the Authority have notified him of the matters complained of 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 Parts III and IV of Schedule 2 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—
- (a) a reduction in the total number of points, calculated in accordance with paragraph 9 of Part III of Schedule 2, attributable to all the services referred to in paragraph 8(1) or (2)(a) or (b) of that Part of that Schedule;
  - (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule);
  - (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (6B) Where a licence has been granted in a case where the Authority could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Authority would have made such a determination in the new circumstances of the case.”
- (3) In subsection (7)—
- (a) after paragraph (b) there is inserted—
    - “or
    - (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,”; and
  - (b) for “(in either case)” there is substituted “(in any case)”.

### SCHEDULE 3

Section 106(3).

#### BROADCASTING STANDARDS COMMISSION: SUPPLEMENTARY PROVISIONS

##### *Interpretation*

- 1 In this Schedule—
- (a) “pension scheme” means a scheme for the payment of pensions, allowances or gratuities,

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- (b) any reference to the payment of pensions, allowances or gratuities includes a reference to like benefits to be given on death or retirement, and
- (c) 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.

*Status and capacity*

- 2 (1) The BSC shall be a body corporate.
- (2) The BSC shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the BSC as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act.

*Appointment of members*

- 3 (1) A person shall be disqualified for being a member of the BSC so long as he is—
  - (a) a governor or employee of the BBC,
  - (b) a member or employee of the Independent Television Commission,
  - (c) a member or employee of the Radio Authority,
  - (d) a member or employee of the Channel Four Television Corporation,
  - (e) a member or employee of the Welsh Authority, or
  - (f) a person who does not fall within any of the preceding paragraphs but who appears to the Secretary of State to be concerned with, or to have an interest in—
    - (i) the preparation or provision of programmes for broadcasting by the BBC or the Welsh Authority, or
    - (ii) the provision of a licensed service or the preparation or provision of programmes for inclusion in such a service.

[<sup>F37</sup>(1A) One of the members of the BSC other than the chairman and the deputy chairman shall be a person who appears to the Secretary of State to be suited to make the interests of Scotland his special care.]

- (2) Before appointing a person to be a member of the BSC the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the BSC; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the BSC that he has no such interest.
- (3) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the BSC shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (2).



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#### Textual Amendments

**F37** Sch. 3 para. 3(1A) inserted (30.6.1999) by S.I. 1999/1756, arts. 1(1), 2, **Sch. para. 19(2)**; S.I. 1998/3178, **art. 3**

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

**C19** Sch. 3 para. 3(1A) restricted (30.6.1999) by S.I. 1999/1756, **arts. 1(1), 8(2)(e)**; S.I. 1998/3178, **art. 3**

#### *Tenure of office*

- 4 (1) Subject to the following provisions of this paragraph, each member of the BSC shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the BSC for more than five years at a time.
- (3) Any member of the BSC may at any time resign his office by notice in writing to the Secretary of State.

#### *Remuneration and pensions of members*

- 5 (1) The BSC may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The BSC may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the BSC may make a payment to him of such amount as the Secretary of State may determine.

#### *Disqualification of members of BSC for House of Commons and Northern Ireland Assembly*

- 6 In Part II of Schedule 1 to the <sup>M14</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Broadcasting Standards Commission”; and a corresponding amendment shall be made in Part II of Schedule 1 to the

<sup>M15</sup>

Northern Ireland Assembly Disqualification Act 1975.

#### Marginal Citations

**M14** 1975 c. 24.

**M15** 1975 c. 25.

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### *Proceedings*

- 7 (1) Subject to paragraph 8 and to the provisions of Part V of this Act, the quorum of the BSC and the arrangements relating to their meetings shall be such as the BSC may determine.
- (2) Subject to section 112, the arrangements may provide for the discharge, under the general direction of the BSC, of any of the BSC's functions by a committee or by one or more of the members or employees of the BSC.
- 8 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the BSC shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the BSC, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the BSC at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the BSC by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the BSC in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the BSC include references to a meeting of any of their committees.
- 9 The validity of any proceedings of the BSC shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 8 or of section 112.

### *Employees of the BSC*

- 10 (1) The BSC may appoint such number of employees as they may determine.
- (2) The remuneration and other conditions of service of the persons appointed under this paragraph shall be determined by the BSC.
- (3) If the BSC determine to do so in the case of any of their employees, the BSC shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the BSC may determine.
- (4) Any determination under sub-paragraph (1), (2) or (3) shall require the approval of the Secretary of State.
- (5) If any employee of the BSC—
- (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the BSC,

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he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the BSC were service as an employee of the BSC.

- (6) The <sup>M16</sup>Employers' Liability (Compulsory Insurance) Act 1969 shall not require insurance to be effected by the BSC.

#### Marginal Citations

M16 1969 c. 57.

#### *Financial provisions*

- 11 (1) The Secretary of State shall pay to the BSC—
- (a) any expenses incurred or to be incurred by the BSC by virtue of paragraph 5 or 10, and
  - (b) with the consent of the Treasury, such sums as he thinks fit for enabling the BSC to meet other expenses.
- (2) Any sums required by the Secretary of State for making payments under sub-paragraph (1) shall be paid out of money provided by Parliament.

#### *Authentication of seal of BSC*

- 12 (1) The application of the seal of the BSC shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.
- (2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland.

#### *Presumption of authenticity of documents issued by BSC*

- 13 Any document purporting to be an instrument issued by the BSC and to be duly executed under the seal of the BSC or to be signed on behalf of the BSC shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

#### *Accounts and audit*

- 14 (1) The BSC shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The BSC shall send a copy of the statement of accounts to the Secretary of State and to the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct.
- (3) The Comptroller and Auditor General shall—
- (a) examine, certify and report on the statement of accounts, and
  - (b) lay a copy of the statement of accounts and of his report before each House of Parliament.

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## SCHEDULE 4

Section 128.

### SUPPLEMENTARY PROVISIONS RELATING TO DISSOLUTION OF BROADCASTING COMPLAINTS COMMISSION AND BROADCASTING STANDARDS COUNCIL

#### *Meaning of “the existing boards”*

1           In this Schedule “the existing boards” has the same meaning as in section 128.

#### *Provisions as to vesting of property etc. of existing boards*

2           (1) Sub-paragraph (2) shall have effect for the purposes of, or in connection with, the vesting in the BSC by virtue of section 128(2) of property, rights or liabilities of the existing boards.

(2) Any agreement made, transaction effected or other thing done by or in relation to either of the existing boards which is in force or effective immediately before the transfer date shall have effect as from that date as if made, effected or done by or in relation to the BSC, in all respects as if the BSC were the same person, in law, as that existing board; and accordingly references to either of the existing boards—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument,
- (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority, and
- (c) in any other document whatever (other than an enactment),

shall be taken as from the transfer date as referring to the BSC.

3           (1) Where immediately before the transfer date there is in force an agreement which—

- (a) confers or imposes on either of the existing boards any rights or liabilities which vest in the BSC by virtue of section 128(2), and
- (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of that existing board,

the agreement shall have effect, in relation to anything falling to be done on or after the transfer date, as if for that reference there were substituted a reference to such person as the BSC may appoint or, in default of appointment, to the member or employee of the BSC who corresponds as nearly as possible to the member or officer of that existing board.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

#### *Pensions*

4           (1) It is hereby declared for the avoidance of doubt that section 128(2) is effective to vest the rights and liabilities of either of the existing boards under any agreement or arrangement for the payment of pensions, allowances or gratuities in the BSC along with all other rights and liabilities of the existing boards.

(2) Accordingly, for the purposes of any such agreement or arrangement as it has effect as from the transfer date, any period of employment with either of the existing boards shall count as employment with the BSC.

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*Final accounts and annual report of existing bodies*

- 5 (1) The Broadcasting Complaints Commission shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in paragraph 12 of Schedule 13 to the 1990 Act (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last such statement of accounts was prepared by them under that paragraph, and
  - (b) the transfer date,
- whether that period is a financial year or not; and that paragraph shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that paragraph in respect of that period.
- (2) The Broadcasting Complaints Commission shall, as soon as possible after the transfer date, prepare and submit to the Secretary of State, in accordance with section 148 of the 1990 Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the reference to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1).
- 6 (1) The Broadcasting Standards Council shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in paragraph 13 of Schedule 14 to the 1990 Act (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last such statement of accounts was prepared by them under that paragraph, and
  - (b) the transfer date,
- whether that period is a financial year or not; and that paragraph shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that paragraph in respect of that period.
- (2) The Broadcasting Standards Council shall, as soon as possible after the transfer date, prepare and submit to the Secretary of State, in accordance with section 160 of the 1990 Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the reference to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1).
- 7 (1) The Secretary of State shall lay copies of any such report as is mentioned in paragraph 5(2) or 6(2) before each House of Parliament.
- (2) Any expenses incurred by the Broadcasting Complaints Commission under paragraph 5 or by the Broadcasting Standards Council under paragraph 6 shall be met by the BSC.

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*Final contributions towards cost of Broadcasting Complaints Commission*

- 8 (1) For the period referred to in paragraph 5(1), the Secretary of State shall notify—
- (a) to each regulatory body the sum which he considers to be the appropriate contribution of that body, in respect of persons providing licensed services under licences granted by that body, towards the expenses of the Broadcasting Complaints Commission, and
  - (b) to the Welsh Authority the sum which he considers to be the appropriate contribution of that body towards such expenses.
- (2) Each regulatory body and the Welsh Authority shall pay to the Secretary of State any sum notified to them under sub-paragraph (1).

SCHEDULE 5

Section 131(4).

TRANSFER SCHEMES RELATING TO BBC TRANSMISSION  
 NETWORK: SUPPLEMENTARY PROVISIONS

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

**C20** *Sch. 5* extended (with modifications) (22.8.1997): to Guernsey by *S.I. 1997/1755, art. 2, Sch.*; to the Isle of Man by *S.I. 1997/1756, art. 2, Sch.*; to Jersey by *S.I. 1997/1757, art. 2, Sch.*

*Contents and effect of scheme*

- 1 (1) A transfer scheme may define the property, rights and liabilities to be transferred to a particular person—
- (a) by specifying or describing the property, rights and liabilities in question,
  - (b) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the BBC's undertaking, or
  - (c) partly in one way and partly in the other.
- (2) A transfer scheme shall appoint the day on which it is to come into force.
- (3) This Act shall have effect, in relation to any provision of a transfer scheme for the transfer of any property, rights or liabilities, so as to transfer the property, rights or liabilities, at the beginning of the day appointed for the coming into force of the scheme, and without further assurance, from the BBC to the person to whom they are allocated under the scheme and to vest them in that person; and the provisions of that scheme in relation to that transfer shall have effect from that time accordingly.
- (4) This Act shall have effect, in relation to any provision of a transfer scheme for the creation, by virtue of paragraph 2, of any interest or right, so as to create the specified interests and rights, at the beginning of the day appointed for the coming into force of the scheme and without further assurance.
- (5) The preceding provisions of this paragraph shall have effect subject to so much of a transfer scheme as provides for—
- (a) the transfer of any of the property, rights or liabilities to be transferred in accordance with the scheme, or

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- (b) the creation of any of the rights or interests to be created in accordance with the scheme,  
to be effected by or under any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g).
- (6) In their application to Scotland, sub-paragraphs (3) and (4) shall have effect with the omission of the words “and without further assurance”.

#### *Division of BBC’s undertaking by scheme*

- 2 (1) For the purposes of making any such division as the BBC consider appropriate of any of the property, rights and liabilities of the BBC between two or more persons (including any division between the BBC and any one or more other persons), a transfer scheme may contain provision—
- (a) for the creation in favour of the BBC of an interest or right in or in relation to property transferred in accordance with that scheme to any person,
  - (b) for the creation, in favour of a person to whom any transfer is made, of an interest or right in or in relation to property so transferred to another,
  - (c) for giving effect to a transfer to any person by the creation, in favour of that person, of an interest or right in or in relation to property retained by the BBC,
  - (d) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both one or more transferees and the BBC,
  - (e) for rights and liabilities enforceable by or against more than one person in accordance with any provision falling within paragraph (d) to be enforceable in different or modified respects by or against each or any of them,
  - (f) for the creation of new rights and liabilities as between different transferees and as between any transferee and the BBC, and
  - (g) without prejudice to paragraph (f), for imposing on any transferee or the BBC an obligation—
    - (i) to enter into such written agreements with any other person on whom any corresponding obligation is, could be or has been imposed by virtue of this paragraph of this Schedule (whether in the same or a different scheme), or
    - (ii) to execute such instruments in favour of any such person,  
as may be specified or described in the scheme.
- (2) A transfer scheme may contain such supplemental and incidental provision with respect to the interests, rights and liabilities of third parties in relation to anything to which the scheme relates as the BBC consider to be necessary or expedient for the purposes of any such division as is mentioned in sub-paragraph (1), or in connection with anything contained in the scheme by virtue of that sub-paragraph.
- (3) The provision that may be contained in a transfer scheme by virtue of sub-paragraph (2) shall include provision for interests, rights or liabilities to which any third party is entitled or subject in relation to anything to which the scheme relates to be modified in such respects or in such manner as may be specified or determined under the scheme.
- (4) An obligation imposed on any person by virtue of sub-paragraph (1)(g) shall be enforceable by the bringing, by any person with or in favour of whom the agreement

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or instrument is to be entered into or executed, of civil proceedings for an injunction or for interdict or for other appropriate relief.

- (5) In this paragraph—
- (a) references, in relation to a transfer scheme, to a transferee include references to any person in whose favour any interest or right is created in accordance with the scheme, and
  - (b) the reference, in relation to such a scheme, to a third party is a reference to a person other than—
    - (i) the BBC, or
    - (ii) any person who (apart from any provision made by virtue of sub-paragraph (1)(e) or (2)) is a transferee.
- (6) Sub-paragraphs (2) and (3) shall be without prejudice to the generality of paragraph 4(1).

*Property to which a scheme may relate*

- 3 (1) The property, rights and liabilities that shall be capable of being transferred in accordance with a transfer scheme shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the BBC,
  - (b) rights and liabilities of the BBC under any agreement or arrangement for the payment of pensions, allowances and gratuities,
  - (c) property acquired at a time after the making of the scheme and before it comes into force, and rights and liabilities which arise or may arise in respect of anything occurring after the making of the scheme,
  - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom, and
  - (e) rights and liabilities under enactments.
- (2) The transfers authorised by sub-paragraph (1)(a), and the interests and rights that may be created in accordance with a transfer scheme, include transfers, interests and rights which are to take effect as if there were—
- (a) no such requirement to obtain any person’s consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,
- as there would be, in the case of any transaction apart from this Act, by reason of provisions having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the BBC are entitled or subject to any property, right or liability.
- (3) Where apart from this sub-paragraph any person would have an entitlement, in consequence of anything done or likely to be done by or under this Act, to terminate, modify, acquire or claim an interest or right which is vested in the BBC at the passing of this Act or acquired by the BBC after that time, or to treat any such interest or right as modified or terminated, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that entitlement shall not be enforceable in relation to that interest or right until after its transfer in accordance with such a scheme, and



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- (b) without prejudice to the preceding provisions of this paragraph or to paragraph 4(2)(a), that entitlement shall be enforceable in relation to the interest or right after its transfer only in so far as the scheme contains provision for it to be transferred subject to the provisions conferring that entitlement.
- (4) Subject to sub-paragraphs (5) and (6), nothing in sub-paragraph (1) or (2) shall enable—
- (a) any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g), or
  - (b) anything done under any such agreement,
- to give effect to any transfer, or to create any interest or right, which could not apart from this paragraph have been made by or under that agreement or instrument.
- (5) A transfer scheme may provide for—
- (a) the transfers to which effect is to be given by or under any agreement or instrument entered into or executed in accordance with the scheme, or
  - (b) the interests or rights that are to be created by or under any such agreement or instrument,
- to include, to such extent as may be specified in the scheme, any such transfer, interest or right as is mentioned in sub-paragraph (2).
- (6) A transfer scheme may provide that sub-paragraph (3) shall apply in relation to the provisions of any agreement or instrument which is to be entered into or executed in accordance with the scheme, and in relation to any proposal for such an agreement or for the execution of such an instrument, as if the reference in sub-paragraph (3)(b) to provision contained in the scheme included a reference to provision contained, in accordance with the scheme, in the agreement or instrument.

#### *Supplemental provisions of schemes*

- 4 (1) A transfer scheme may contain supplemental, incidental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with any other provisions contained in the scheme; and any such provision may include different provision for different cases or different purposes.
- (2) A transfer scheme may, in relation to transfers in accordance with the scheme, make provision, either generally or for such purposes as may be specified in the scheme—
- (a) for the transferee to be treated as the same person in law as the BBC,
  - (b) for agreements made, transactions effected or other things done by or in relation to the BBC to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee,
  - (c) for references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the BBC to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme,
  - (d) for proceedings commenced by or against the BBC to be continued by or against the transferee, and

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- (e) for any such disputes as to the effect of the scheme as arise between different transferees, or between any transferee on the one hand and the BBC on the other, to be referred to such arbitration as may be specified in or determined under the scheme.
- (3) Where any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in England and Wales or Northern Ireland—
- (a) the scheme may contain provision for treating that person as having given another person an acknowledgment in writing of the right of that other person to production of the document and to delivery of copies of the document, and
- (b) section 64 of the <sup>M17</sup>Law of Property Act 1925 (production and safe custody of documents) or section 9 of the <sup>M18</sup>Conveyancing Act 1881 (the corresponding provision for Northern Ireland) shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.
- (4) Where any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in Scotland transferred in accordance with a transfer scheme, subsections (1) and (2) of section 16 of the <sup>M19</sup>Land Registration (Scotland) 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.
- (5) In this paragraph—
- (a) references to a transfer include references to the creation in any person’s favour of any interest or right, and references to a transferee shall be construed accordingly, and
- (b) references to a person who is entitled, in consequence of any transfer, to possession of a document include references to the BBC in a case where the BBC are entitled to retain possession of any document following any transfer.
- (6) Sub-paragraphs (2) to (4) shall be without prejudice to the generality of sub-paragraph (1).

#### Marginal Citations

**M17** 1925 c. 20.

**M18** 1881 c. 41.

**M19** 1979 c. 33.

#### *Certificate of Secretary of State as to vesting of property etc.*

- 5 A certificate issued by the Secretary of State to the effect that any property, right or liability of the BBC vested at a particular time in accordance with a transfer scheme in a person specified in the certificate shall be conclusive evidence of the matters stated in the certificate.

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*Duties in relation to foreign property etc.*

- 6
- (1) It shall be the duty of the BBC and of any person to whom any foreign property, right or liability is transferred to take all such steps as may be requisite to secure that the vesting in the transferee, in accordance with the scheme, of the foreign property, right or liability is effective under the relevant foreign law.
  - (2) Until the vesting in the transferee in accordance with the scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the BBC to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.
  - (3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in the transferee in accordance with the scheme of any foreign property, right or liability.
  - (4) The BBC shall have all such powers as may be requisite for the performance of their duties under this paragraph, but it shall be the duty of a person to whom a transfer is made in accordance with a transfer scheme to act on behalf of the BBC (so far as possible) in performing the duties imposed on them by this paragraph.
  - (5) Where—
    - (a) any foreign property, rights or liabilities are acquired or incurred by the BBC in respect of any other property, rights or liabilities, and
    - (b) by virtue of this paragraph the BBC hold the other property or rights for the benefit of another person or discharge the liability on behalf of another person,the property, rights or liabilities acquired or incurred are immediately to become property, rights or liabilities of that other person; and the preceding provisions of this paragraph shall have effect accordingly in relation to the property, rights or liabilities acquired or incurred.
  - (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
  - (7) Any expenses incurred by the BBC under this paragraph shall be met by the person to whom the transfer in question is made.
  - (8) Any obligation imposed under this paragraph shall be enforceable as if contained in a contract between the BBC and the person to whom the transfer in question is made.

*Modification of scheme by agreement*

- 7
- (1) This paragraph applies where any person to whom anything has been transferred in accordance with a transfer scheme agrees in writing with the BBC or another person to whom anything has been transferred in accordance with that or any other transfer scheme that, for the purpose of modifying the effect of the scheme or, as the case may be, of modifying the effect of either or both of the schemes—
    - (a) any of the property, rights or liabilities transferred in accordance with the scheme or either of them, and
    - (b) any or all of the property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,

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should be transferred from one to the other as from a date appointed by the agreement.

- (2) If—
- (a) the agreement is entered into within the period of twelve months after the time when a transfer in accordance with a transfer scheme of property, rights or liabilities to any of its parties comes into force, and
  - (b) the Secretary of State has given his approval to the transfer for which the agreement provides and to its terms and conditions,
- then the transfer for which the agreement provides shall take effect on the date appointed by the agreement in the like manner as a transfer for which provision is made by a transfer scheme.
- (3) Subject to the approval of the Secretary of State and to sub-paragraph (4), the provisions that may be contained in a modification agreement shall include any such provision in relation to any transfer for which it provides as may be contained, in relation to any transfer for which a transfer scheme provides, in that scheme.
- (4) Nothing in any modification agreement shall provide for any interests or rights to be created, as opposed to transferred, except as between persons who are parties to the agreement.
- (5) Before—
- (a) refusing his approval for the purposes of this paragraph, or
  - (b) giving his approval for those purposes in a case where the BBC are not a party to the proposed agreement,
- the Secretary of State shall consult the BBC.
- (6) In this paragraph references to a transfer in accordance with a transfer scheme include references to the creation of any interest, right or liability in accordance with such a scheme.
- (7) In this paragraph and paragraphs 8 and 9 “modification agreement” means any agreement providing for a transfer which is to take effect in accordance with sub-paragraph (2).

#### *Compensation*

- 8 (1) Where, in consequence of any provisions included in a transfer scheme for the purposes of any such division as is mentioned in paragraph 2(1), the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), the third party shall be entitled to such compensation as may be just in respect of—
- (a) any diminution attributable to that modification in the value of any of his interests or rights, or
  - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) are modifications by virtue of which—
- (a) an interest of the third party in any property is transformed into, or replaced by—
    - (i) an interest in only part of that property, or
    - (ii) separate interests in different parts of that property,
  - (b) a right of the third party against the BBC is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is

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equivalent (disregarding the person against whom it is enforceable) to the right against the BBC, or

- (c) a liability of the third party to the BBC is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the BBC.

(3) Where—

- (a) a third party would, apart from any provisions of a transfer scheme or paragraph 3(3), have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and
- (b) the provisions of that scheme or of paragraph 3(3) have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a), and
- (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.

(4) A liability to pay compensation under this paragraph shall fall on the persons not being themselves third parties who, as the case may be—

- (a) have interests in the whole or any part of the property affected by the modification in question,
- (b) are subject to the rights of the person to be compensated which are affected by the modification in question,
- (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or
- (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3),

and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

(5) Where any liability falls by virtue of sub-paragraph (4) on the BBC, that sub-paragraph shall have effect subject to so much of any transfer scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to any other person.

(6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall be referred to and determined—

- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or
- (b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

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- (7) This paragraph shall have effect in relation to the provisions of any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g), and to any modification agreement, as it has effect in relation to the provisions of a transfer scheme.
- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—
- (a) the BBC or any of their wholly-owned subsidiaries (as defined by section 736 of the <sup>M20</sup>Companies Act 1985),
  - (b) the Secretary of State, or
  - (c) any person whose consent to those provisions has been given for the purposes of section 132(2) or who has agreed to those provisions by virtue of being a party to a modification agreement.

**Marginal Citations**

**M20** 1985 c. 6.

*Notice to persons affected by scheme*

- 9 (1) It shall be the duty of the BBC, where it appears to them in the case of any transfer scheme or modification agreement that there are persons whose property, rights or liabilities are affected in a manner that may give rise to an entitlement to compensation under paragraph 8, to give notice under this paragraph to every such person.
- (2) A notice to be given by the BBC under this paragraph shall be given as soon as reasonably practicable after they make the scheme or agreement.
- (3) A notice under this paragraph shall set out the general effect of the scheme or, as the case may be, of the agreement and shall describe the respects in which it appears to the BBC that the property, rights or liabilities of the person to whom it is given are affected.
- (4) Where it is not reasonably practicable for the notice under this paragraph to any person to be given to that person, the BBC shall, instead, take such steps for publishing the contents of the notice as they may consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of that person.

*Consideration for transfer etc.*

- 10 (1) A transfer in accordance with a transfer scheme may be made for consideration or for no consideration and, if it is made for consideration, the consideration may, in particular, take the form of the issue of shares or securities.
- (2) In sub-paragraph (1), “transfer” has the meaning given by paragraph 1(1) of Schedule 7.

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## SCHEDULE 6

Section 134.

## TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUCCESSOR COMPANIES

*Interpretation*

## 1 (1) In this Schedule—

“the Charter” means the <sup>M21</sup>Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation;

“preparatory scheme” means a transfer scheme whose main purpose is to provide for a transfer of property, rights or liabilities from the BBC to a wholly-owned subsidiary of the BBC;

“successor company” means a company to which property, rights or liabilities are transferred in accordance with a preparatory scheme at a time when the company is a wholly-owned subsidiary of the BBC;

“transfer” includes—

- (a) any transfer effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by a provision contained in a preparatory scheme by virtue of paragraph 2(1)(g) of Schedule 5;
- (b) the creation of interests, rights or liabilities by or under any such agreement or instrument; and
- (c) the creation of interests, rights or liabilities by virtue of any provision contained in a preparatory scheme by virtue of paragraph 2 of Schedule 5;

and references to a transfer in accordance with a preparatory scheme shall be construed accordingly;

“wholly-owned subsidiary” has the meaning given by section 736 of the <sup>M22</sup>Companies Act 1985.

- (2) Any reference in this Schedule to vesting in accordance with a preparatory scheme or vesting effected by a preparatory scheme shall be construed as a reference to vesting as a result of a transfer in accordance with a preparatory scheme.

**Marginal Citations**

**M21** Cm. 3248.

**M22** 1985 c. 6.

*Statutory accounts*

- 2 (1) The following provisions of this paragraph shall have effect for the purposes of any statutory accounts of a successor company.
- (2) The vesting in the company effected by any preparatory scheme shall be taken—
  - (a) to have been effected immediately after the end of the last financial year of the BBC to end before the coming into force of the scheme, and
  - (b) to have been a vesting of such property, rights and liabilities as are determined by or under the scheme.

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- (3) The value of any asset and the amount of any liability which is taken by virtue of sub-paragraph (2) to have been vested in the company shall be taken to have been—
  - (a) in the case where the value or amount is determined by or under the preparatory scheme, that value or amount, and
  - (b) in any other case, the value or amount assigned to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their last financial year to end before the day on which the preparatory scheme comes into force.
- (4) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (3).
- (5) In this paragraph “statutory accounts”, in relation to a company, means any accounts of that company prepared for the purposes of any provision of the <sup>M23</sup>Companies Act 1985 (including group accounts).

#### Marginal Citations

M23 1985 c. 6.

#### *Distributable reserves*

- 3 (1) Where statutory accounts of a successor company prepared as at any time would show the company as having net assets in excess of the aggregate of—
  - (a) its called-up share capital, and
  - (b) the amount, apart from any property, rights and liabilities transferred to it in accordance with any preparatory scheme, of its undistributable reserves,
 then, for the purposes of section 263 of the Companies Act 1985 (profits available for distribution) and of the preparation as at that time of any statutory accounts of the company, that excess shall be treated, except so far as the Secretary of State may otherwise direct, as representing an excess of the company’s accumulated realised profits over its accumulated realised losses.
- (2) For the purposes of section 264 of the Companies Act 1985 (restriction on distribution of assets) so much of any excess of a company’s net assets as falls, in accordance with a direction under this paragraph, to be treated otherwise than as representing an excess of the company’s accumulated realised profits over its accumulated realised losses shall be treated (subject to any modification of that direction by a subsequent direction under this paragraph) as comprised in the company’s undistributable reserves.
- (3) A direction under this paragraph may provide, in relation to any amount to which it applies, that, on the realisation (whether before or after the company in question ceases to be a wholly-owned subsidiary of the BBC) of such profits and losses as may be specified or described in the direction, so much of that amount as may be determined in accordance with the direction is to cease to be treated as mentioned in sub-paragraph (2) and is to fall to be treated as comprised in the company’s accumulated realised profits.



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- (4) The Secretary of State shall not give a direction under this paragraph in relation to a successor company at any time after the company has ceased to be a wholly-owned subsidiary of the BBC.
- (5) The consent of the Treasury shall be required for the giving of a direction under this paragraph.
- (6) In this paragraph—
  - “called-up share capital” has the same meaning as in the Companies Act 1985;
  - “net assets” has the meaning given by subsection (2) of section 264 of that Act;
  - “undistributable reserves” has the meaning given by subsection (3) of that section;and references in this paragraph, in relation to a company, to statutory accounts are references to accounts of that company prepared in respect of any period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period.

#### *Dividends*

- 4 (1) Where a distribution is proposed to be declared during any accounting reference period of a successor company which includes a transfer date or before any accounts are laid or filed in respect of such a period, sections 270 to 276 of the <sup>M24</sup>Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—
  - (a) references in section 270 to the company’s accounts or to accounts relevant under that section, and
  - (b) references in section 273 to initial accounts,included references to such accounts as, on the assumptions stated in subparagraph (2), would have been prepared under section 226 of that Act in respect of the relevant year (in this paragraph referred to as “the relevant accounts”).
- (2) Those assumptions are—
  - (a) that the relevant year had been a financial year of the successor company,
  - (b) that the vesting in accordance with the preparatory scheme had been a vesting of all the property, rights and liabilities transferred to the company in accordance with that scheme and had been effected immediately after the beginning of that year,
  - (c) that the value of any asset and the amount of any liability of the BBC vested in the successor company in accordance with the preparatory scheme had been the value or (as the case may be) amount determined by or under the scheme or (if there is no such determination) the value or amount assigned to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their financial year immediately preceding the relevant year,
  - (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year, and

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- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.
- (3) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (2)(c).
- (4) The relevant accounts shall not be regarded as statutory accounts for the purposes of paragraph 2.
- (5) In this paragraph—  
“accounting reference period” has the meaning given by section 224 of the Companies Act 1985;  
“complete financial year” means a financial year ending with 31st March;  
“the relevant year”, in relation to any transfer date, means the last complete financial year ending before that date;  
“a transfer date”, in relation to a successor company, means the date of the coming into force of any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company.

**Marginal Citations**

**M24** 1985 c. 6.

*Application of the Trustee Investments Act 1961*

- 5 (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the <sup>M25</sup>Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of a successor company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—
- (a) in every year preceding the first investment year which is included in the relevant five years, and
- (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In sub-paragraph (1)—  
“the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made;  
“the transfer date”, in relation to a successor company, means the first date on which any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company comes into force.

**Marginal Citations**

**M25** 1961 c. 62.

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## SCHEDULE 7

Section 135.

### TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: TAXATION PROVISIONS

#### *Interpretation*

1 (1) In this Schedule, unless the context otherwise requires—

F38

. . .

“the BBC transmission network” has the meaning given by section 131(2);

[<sup>F39</sup>“the Capital Allowances Act” means the Capital Allowances Act 2001 and includes, where the context admits, enactments which under the Taxes Act 1988 are to be treated as contained in the Capital Allowances Act 2001.]

“direct disposal scheme” means a transfer scheme which is not a preparatory scheme;

“direct disposal transfer” means a transfer in accordance with a direct disposal scheme;

“the documents regulating the BBC” includes—

(a) the <sup>M26</sup>Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation; and

(b) the <sup>M27</sup>Agreement dated 25th January 1996 between Her Majesty’s Secretary of State for National Heritage and the British Broadcasting Corporation;

“the Gains Act” means the <sup>M28</sup>Taxation of Chargeable Gains Act 1992;

“modification agreement” has the meaning given by paragraph 7(7) of Schedule 5;

“preparatory scheme” means a transfer scheme whose main purpose is to provide for a transfer of property, rights or liabilities from the BBC to a wholly-owned subsidiary of the BBC;

“preparatory transfer” means a transfer in accordance with a preparatory scheme;

“relevant transfer” means a transfer in accordance with a transfer scheme;

“successor company” means a company to which property, rights or liabilities are transferred in accordance with a preparatory scheme at a time when the company is a wholly-owned subsidiary of the BBC;

“the Taxes Act 1988” means the <sup>M29</sup>Income and Corporation Taxes Act 1988;

“transfer”, except for the purposes of paragraphs 13 to 18, includes—

(a) any transfer effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by a provision contained in a transfer scheme by virtue of paragraph 2(1)(g) of Schedule 5;

(b) the creation of interests, rights or liabilities by or under any such agreement or instrument; and

(c) the creation of interests, rights or liabilities by virtue of any provision contained in a transfer scheme by virtue of paragraph 2 of Schedule 5;

and references to a transfer in accordance with a transfer scheme (or any description of transfer scheme) shall be construed accordingly;

“transferee”—

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- (a) in relation to a transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the transfer scheme; and
  - (b) in relation to a relevant transfer, means the person to whom the property, rights or liabilities in question are transferred in accordance with the transfer scheme in question;
- “wholly-owned subsidiary” has the meaning given by section 736 of the <sup>M30</sup>Companies Act 1985.
- (2) In any provision of this Schedule “the prescribed amount”, in relation to any transferee under a transfer scheme, means such amount as may be specified by the Secretary of State by order for the purposes of that provision in its application to that transferee.
- (3) This Schedule—
- (a) so far as it relates to corporation tax, shall be construed as one with the Corporation Tax Acts, and
  - (b) so far as it relates to capital allowances, shall be construed as one with the [<sup>F40</sup>the Capital Allowances Act].

#### Textual Amendments

- F38** Sch. 7 para. 1(1): definition of “the Allowances Act” repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), 580, Sch. 2 para. 97(1), Sch. 4
- F39** Sch. 7 para. 1(1): definition of “the Capital Allowances Act” substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) for definition of “the capital Allowances Acts” by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(1)
- F40** Words in Sch. 7 para. 1(3)(b) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(2)

#### Marginal Citations

- M26** Cm. 3248.  
**M27** Cm. 3152.  
**M28** 1992 c. 12.  
**M29** 1988 c. 1.  
**M30** 1985 c. 6.

#### *Chargeable gains: preparatory transfers etc to be without gain or loss*

- 2 (1) For the purposes of corporation tax on chargeable gains, the disposal of property, rights or liabilities which is constituted by a preparatory transfer shall, subject to the following provisions of this Schedule, be taken in relation to both—
- (a) the person to whom the disposal is made, and
  - (b) the person making the disposal,
- to be effected for a consideration such that no gain or loss accrues to the person making the disposal.
- (2) Section 171(1) of the Gains Act (which makes provision in relation to the disposal of assets from one member of a group of companies to another member of the group) shall not apply where the disposal in question is a preparatory transfer.

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*Chargeable gains: amendment of section 35(3)(d) of the Gains Act*

- 3 In section 35(3)(d) of the Gains Act (list of provisions for transfers without gain or loss for purposes of provisions applying to assets held on 31st March 1982) after sub-paragraph (xi) there shall be inserted—

“(xii) paragraph 2(1) of Schedule 7 to the Broadcasting Act 1996;”.

*Chargeable gains: section 41 of the Gains Act*

- 4 Subsection (1) of section 174 of the Gains Act (which applies section 41 of that Act to cases where assets have been acquired without gain or loss) shall have effect, without prejudice to paragraph 2, where there has been a preparatory transfer as if the asset to which the preparatory transfer relates had thereby been transferred and acquired in relevant circumstances, within the meaning of that subsection.

*Chargeable gains: assets held before 6th April 1965*

- 5 Schedule 2 to the Gains Act (assets held on 6th April 1965) shall have effect in relation to any assets which are transferred to a successor company in accordance with a preparatory scheme as if—

- (a) the BBC and the successor company were the same person; and
- (b) those assets, to the extent that they were in fact acquired or provided by the BBC, were acquired or, as the case may be, provided by the successor company.

*Chargeable gains: sale of successor company : group transactions*

- 6 (1) For the purposes of section 179 of the Gains Act (company ceasing to be a member of a group), where any company (“the degrouped company”) ceases, by virtue of a qualifying transaction, to be a member of a group of companies, the degrouped company shall not, by virtue of that qualifying transaction, be treated under that section as having sold, and immediately reacquired, any asset acquired from a company which falls to be regarded for the purposes of subsection (1) of that section as having been at the time of acquisition a member of that group.
- (2) Where, disregarding any preparatory transactions, a company would be regarded for the purposes of section 179 of the Gains Act (and, accordingly, of this paragraph) as ceasing to be a member of a group of companies by virtue of a qualifying transaction, it shall be regarded for those purposes as so doing by virtue of the qualifying transaction and not by virtue of any preparatory transactions.
- (3) In this paragraph—
- “preparatory transaction”, in the case of any qualifying transaction, means anything done for the purpose of initiating, advancing or facilitating the qualifying transaction;
  - “qualifying transaction” means the disposal by the BBC of any shares or securities of a successor company.
- (4) Expressions used in this paragraph and in section 179 of the Gains Act have the same meaning in this paragraph as they have in that section.

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*Chargeable gains: sale or exchange of shares or securities of successor company*

- 7 (1) Where a company issues shares or debentures to the BBC in exchange for shares in or debentures of a successor company which have not, before that exchange, been disposed of by the BBC—
- (a) sections 127 to 131 of the Gains Act (reorganisation or reduction of share capital) shall not apply by virtue of subsection (3) of section 135 of that Act (exchange of securities) in relation to that exchange, and
  - (b) section 116 of that Act (reorganisations, conversions and reconstructions) accordingly does not have effect in relation to that transaction,
- and the following provisions of this paragraph shall apply accordingly.
- (2) The following provisions of this paragraph apply in any case where—
- (a) there is a preparatory transfer to a successor company;
  - (b) the BBC disposes of any shares or securities of the successor company for a consideration in money or money's worth; and
  - (c) those shares or securities are shares or securities which were—
    - (i) held by or on behalf of the BBC immediately before the preparatory transfer takes effect, or
    - (ii) issued to or for the BBC at a time when the successor company is a wholly-owned subsidiary of the BBC,
 and which have not previously been disposed of by the BBC.
- (3) For the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal mentioned in sub-paragraph (2)(b).
- (4) If the consideration for the disposal mentioned in sub-paragraph (2)(b) consists of or includes a right to any variable deferred consideration, then, for the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal of the right to the variable deferred consideration.
- (5) In this paragraph “variable deferred consideration” means any consideration—
- (a) which is not to be given until after the disposal mentioned in sub-paragraph (2)(b); and
  - (b) whose amount or value, as at the time when it is to be given, is not ascertainable at the time of that disposal.

*No chargeable gain or allowable loss to arise on  
 any disposal constituted by a direct disposal transfer*

- 8 (1) For the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on any disposal constituted by a direct disposal transfer.
- (2) If the consideration for a direct disposal transfer consists of or includes a right to any variable deferred consideration, then, for the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal of the right to the variable deferred consideration.
- (3) In this paragraph “variable deferred consideration”, in the case of any direct disposal transfer, means any consideration—

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- (a) which is not to be given until after the direct disposal transfer; and
- (b) whose amount or value, as at the time when it is to be given, is not ascertainable at the time of the disposal constituted by that transfer.

*Chargeable gains: value shifting*

- 9 (1) Nothing in Part VI of this Act, and no instrument or agreement made, or other thing done, under or by virtue of that Part or for the purpose of initiating, advancing or facilitating the disposal by the BBC of—
- (a) the whole or any part of the BBC transmission network, or
  - (b) any shares or securities of a successor company which are shares or securities which were—
    - (i) held by or on behalf of the BBC immediately before a preparatory transfer to the successor company takes effect, or
    - (ii) issued to or for the BBC at a time when the successor company is a wholly-owned subsidiary of the BBC,and which have not previously been disposed of by the BBC,
- shall be regarded as a scheme or arrangement for the purposes of section 30 of the Gains Act (value-shifting).
- (2) In any case where—
- (a) an asset which is the subject of a preparatory transfer has previously been the subject of a scheme or arrangements falling within subsection (1) of section 30 of the Gains Act,
  - (b) in consequence, subsection (5) of that section (consideration on disposal to be treated as increased for certain purposes) would, apart from sub-paragraph (3), have had effect in relation to the consideration for the preparatory transfer, and
  - (c) the consideration for the preparatory transfer falls to be determined, for the purposes of corporation tax on chargeable gains, under paragraph 2,
- sub-paragraph (3) shall apply.
- (3) Where this sub-paragraph applies—
- (a) subsection (5) of section 30 of the Gains Act shall not have effect in relation to the consideration for the preparatory transfer; but
  - (b) on the first subsequent disposal of the asset which is neither a preparatory transfer nor a group disposal—
    - (i) that subsection shall have effect in relation to the consideration for that disposal (whether or not it would otherwise have done so); and
    - (ii) the increase that falls to be made under that subsection shall be so calculated as to include any increase which would, but for paragraph (a) above, have fallen to be made in relation to the preparatory transfer.
- (4) In this paragraph “group disposal” means a disposal which falls to be treated by virtue of section 171(1) of the Gains Act as made for a consideration such that no gain or loss accrues to the person making the disposal.

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*Chargeable gains: receipt of compensation or insurance money*

- 10 (1) Subsection (4) of section 23 of the Gains Act (adjustments where compensation or insurance money used for purchase of replacement asset) shall have effect in accordance with sub-paragraph (3) in any case where—
- (a) there is a relevant transfer such that—
    - (i) a capital sum received by the BBC by way of compensation for the loss or destruction of an asset, or under a policy of insurance of the risk of the loss or destruction of an asset, becomes available to the transferee; or
    - (ii) a right of the BBC to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
  - (b) the transferee acquires an asset in circumstances where—
    - (i) had there been no such relevant transfer, and
    - (ii) had the BBC acquired the asset by the application of that sum,
 the BBC would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (2) Subsection (5) of that section (adjustments where a part of any compensation or insurance money is used for the purchase of a replacement asset) shall have effect in accordance with sub-paragraph (3) in any case where—
- (a) there is a relevant transfer such that—
    - (i) a capital sum received by the BBC by way of compensation for the loss or destruction of an asset, or under a policy of insurance of the risk of the loss or destruction of an asset, becomes available to the transferee; or
    - (ii) a right of the BBC to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
  - (b) the transferee acquires an asset in circumstances where—
    - (i) had there been no such relevant transfer, and
    - (ii) had the BBC acquired the asset by the application of all of that sum except for a part which was less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the asset lost or destroyed,
 the BBC would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (3) In a case falling within sub-paragraph (1) or (2) of this paragraph, subsection (4) or, as the case may be, subsection (5) of section 23 of the Gains Act shall have effect as if the transferee and the BBC were the same person, except that—
- (a) in a case falling within sub-paragraph (1)(a)(i) or (2)(a)(i)—
    - (i) any claim under the subsection in question must be made by the BBC and the transferee; and
    - (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the BBC; and
  - (b) in a case falling within sub-paragraph (1)(a)(ii) or (2)(a)(ii)—
    - (i) any claim under the subsection in question must be made by the transferee; and



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- (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the transferee.

*Loan relationships: disposal of securities by BBC*

- 11 (1) This paragraph applies in any case where—
- (a) there is a preparatory transfer to a successor company;
  - (b) the BBC disposes of any securities of the successor company for a consideration in money or money's worth; and
  - (c) those securities are securities issued to or for the BBC in consideration for the preparatory transfer.
- (2) Where this paragraph applies, any debits or credits which, by reason of the disposal mentioned in sub-paragraph (1)(b), would, apart from this sub-paragraph, be given by Chapter II of Part IV of the <sup>M31</sup>Finance Act 1996 (loan relationships) in respect of a loan relationship for an accounting period of the BBC shall not be brought into account for the purposes of that Chapter as respects the BBC.

**Marginal Citations**

**M31** 1996 c. 8.

*Transfer of trade: loss relief and capital allowances*

- 12 (1) This paragraph applies in any case where, as a result of a relevant transfer,—
- (a) the BBC ceases to carry on a trade; and
  - (b) the transferee begins to carry on that trade.
- (2) Where this paragraph applies, section 343 of the Taxes Act 1988 (company reconstructions without change of ownership) shall not have effect in relation to the event described in sub-paragraph (1).
- (3) Where this paragraph applies, the trade mentioned in sub-paragraph (1) shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the [<sup>F41</sup>the Capital Allowances Act]; but—
- (a) there shall be made to or on the transferee in accordance with [<sup>F42</sup>that Act] all such allowances and charges as would, if the BBC had continued to carry on the trade, have fallen to be made to or on it; and
  - (b) the amount of any such allowance or charge shall be computed as if—
    - (i) the transferee had been carrying on the trade since the BBC began to do so; and
    - (ii) everything done to or by the BBC had been done to or by the transferee (but so that no sale or transfer which on the transfer of the trade is made to the transferee by the BBC of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).
- (4) For the purposes of this paragraph—

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- (a) where, on the BBC ceasing to carry on a trade, a company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the company shall be treated as a separate trade, if the effect of so treating it is that this paragraph applies by virtue of sub-paragraph (1) on that event in relation to that separate trade; and
- (b) where, on the BBC ceasing to carry on part of a trade, a company begins to carry on the activities of that part as its trade or part of its trade, the BBC shall be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that this paragraph applies by virtue of sub-paragraph (1) on that event in relation to that separate trade.

#### Textual Amendments

- F41** Words in [Sch. 7 para. 12\(3\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 97\(3\)\(a\)](#)
- F42** Words in [Sch. 7 para. 12\(3\)\(a\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 97\(3\)\(b\)](#)

*Capital allowances: industrial buildings* <sup>F43</sup> . . .

#### Textual Amendments

- F43** [Sch. 7 para. 13](#): words in the cross-heading repealed (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\), 580](#), [Sch. 2 para. 97\(4\)\(a\)](#), [Sch. 4](#)

- 13 (1) This paragraph applies in any case where there is a relevant transfer of property which is, for the purposes of [<sup>F44</sup>Part 3 of the Capital Allowances Act (industrial buildings allowances)], the relevant interest in relation to any expenditure incurred on the construction of a building or structure.
- (2) Where this paragraph applies, the Secretary of State may by order make provision specifying, as respects the transferee,—
- (a) the amount which is to be taken for the purposes of [<sup>F45</sup>Part 3 of the Capital Allowances Act] to be the amount of the capital expenditure incurred on the construction of the building or structure; and
  - (b) the date which is to be taken for the purposes of that Part as the date on which the building or structure was first used.
- (3) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.

#### Textual Amendments

- F44** Words in [Sch. 7 para. 13\(1\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 97\(4\)\(b\)](#)
- F45** Words in [Sch. 7 para. 13\(2\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 97\(5\)](#)

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*Capital allowances: [F46]plant and machinery]*

**Textual Amendments**

**F46** Sch. 7 para. 14: words in cross-heading substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(6)(a)

- 14 (1) For the purposes of [F47]Part 2 of the Capital Allowances Act (plant and machinery allowances)] property which is transferred to a successor company in accordance with a preparatory scheme shall be treated as if—
- (a) it had been acquired by the successor company, for the purposes for which it is used by that company on and after the date on which the transfer of the property in accordance with the scheme takes effect, on that date; and
  - (b) capital expenditure of the prescribed amount had been incurred on that date by the successor company on the acquisition of the property for the purposes mentioned in paragraph (a).
- (2) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.

**Textual Amendments**

**F47** Words in Sch. 7 para. 14(1) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(6)(b)

*Capital allowances: leased fixtures*

- 15 (1) This paragraph applies to any lease which is granted in pursuance of an obligation imposed by a provision contained in a preparatory scheme by virtue of paragraph 2(1)(g) of Schedule 5.
- (2) Where the conditions in [F48]section 183(1)(a) and (b) of the Capital Allowances Act (incoming lessee where lessor entitled to allowances)]are fulfilled in relation to a lease to which this paragraph applies—
- (a) the lessee shall be deemed for the purposes of [F49]Part 2] of that Act to have given as consideration for the lease a capital sum which falls to be treated for the purposes of that Part as expenditure on the provision of the fixture concerned;
  - (b) the amount of that capital sum shall be the prescribed amount; and
  - (c) [F50]subsection (1)(d)] of that section shall be disregarded.
- (3) Where the conditions in [F51]section 184(1)(a) to (c) of the Capital Allowances Act (incoming lessee where lessor not entitled to allowances)] are fulfilled in relation to a lease to which this paragraph applies—
- (a) the lessee shall be deemed for the purposes of [F52]Part 2] of that Act to have given as consideration for the lease a capital sum which falls to be treated for the purposes of that Part as expenditure on the provision of the fixture concerned; and
  - (b) the amount of that capital sum shall be the prescribed amount.

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#### Textual Amendments

- F48** Words in [Sch. 7 para. 15\(2\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by 2001 c. 2, ss. 578, 579(1), [Sch. 2 para. 97\(7\)\(a\)](#)
- F49** Words in [Sch. 7 para. 15\(2\)\(a\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by 2001 c. 2, ss. 578, 579(1), [Sch. 2 para. 97\(7\)\(b\)](#)
- F50** Words in [Sch. 7 para. 15\(2\)\(c\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by 2001 c. 2, ss. 578, 579(1), [Sch. 2 para. 97\(7\)\(c\)](#)
- F51** Words in [Sch. 7 para. 15\(3\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by 2001 c. 2, ss. 578, 579(1), [Sch. 2 para. 97\(8\)\(a\)](#)
- F52** Words in [Sch. 7 para. 15\(3\)\(a\)](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by 2001 c. 2, ss. 578, 579(1), [Sch. 2 para. 97\(8\)\(b\)](#)

#### *Capital allowances: connected persons*

- 16 In [<sup>F53</sup>Part 2 of the Capital Allowances Act (plant and machinery allowances)] references to a transaction (however described) between connected persons within the meaning of section 839 of the Taxes Act 1988 shall not include references to a preparatory transfer.

#### Textual Amendments

- F53** Words in [Sch. 7 para. 16](#) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by 2001 c. 2, ss. 578, 579(1), [Sch. 2 para. 97\(9\)](#)

#### *[<sup>F54</sup>Capital allowances: agricultural buildings allowances]*

#### Textual Amendments

- F54** [Sch. 7 para. 17](#) and preceding cross-heading substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by 2001 c. 2, ss. 578, 579(1), [Sch. 2 para. 97\(10\)](#)

- [<sup>F55</sup>17 (1) This paragraph applies where there is a relevant transfer of property which is the relevant interest in relation to any expenditure for which the BBC would be entitled to an allowance (other than a balancing allowance) under Part 4 of the Capital Allowances Act (agricultural buildings allowances).
- (2) Where this paragraph applies, then, as respects the transferee—
- (a) his acquisition of the relevant interest shall be treated for the purposes of Part 4 of the Capital Allowances Act as a balancing event within subsection (2) (a) of section 381 (regardless of the lack of any election); and
  - (b) section 376(2) shall apply as if—
    - (i) the value to be assigned to RQE (residue of qualifying expenditure immediately after event) were the prescribed amount; and
    - (ii) the value to be assigned to B (remaining writing-down period) were such as the Secretary of state may by order specify.
- (3) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.]

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### Textual Amendments

**F55** Sch. 7 para. 17 and preceding cross-heading substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 97(10)**

#### *Corporation tax: BBC and successor company to be treated as one for certain purposes*

- 18 (1) If any property, rights or liabilities are transferred to a successor company in accordance with a preparatory scheme, then, subject to sub-paragraph (2), the following provisions shall apply for the purposes of the Corporation Tax Acts in their application in respect of any accounting period ending on or after the date on which the transfer takes effect, namely—
- (a) any trade or part of a trade carried on by the BBC which is transferred in accordance with the preparatory scheme to the successor company shall be treated as having been, at the time of its commencement and at all times since that time, a separate trade carried on by that company;
  - (b) the trade or trades carried on by the successor company on and after the date on which the transfer takes effect shall be treated as the same trade or trades as that which, by virtue of paragraph (a), is treated as carried on before that date;
  - (c) all property, rights and liabilities of the BBC which are transferred in accordance with the scheme to the successor company shall be treated as having been, at the time when they became vested in the BBC and at all times since that time, property, rights and liabilities of that company; and
  - (d) anything done by the BBC in relation to property, rights and liabilities which are transferred to the successor company in accordance with the preparatory scheme shall be treated as having been done by that company.
- (2) Sub-paragraph (1) shall not apply for the purposes of—
- (a) corporation tax on chargeable gains,
  - (b) capital allowances, or
  - (c) relief for losses incurred in carrying on a trade,
- and no provision included in a scheme by virtue of paragraph 4(2)(a) of Schedule 5 shall have effect for those purposes.

#### *Corporation tax: no profit or loss under Case I of Schedule D by reason of a direct disposal transfer*

- 19 In determining for the purposes of Case I of Schedule D the profits or gains or losses arising or accruing to the BBC, it shall be assumed that no profits or gains, and no losses, arise or accrue to the BBC by reason of a direct disposal transfer of—
- (a) any trading stock, within the meaning of section 100 of the Taxes Act 1988, belonging to a trade carried on by the BBC;
  - (b) any right of the BBC to receive an amount which is for the purposes of corporation tax—
    - (i) an amount brought into account as a trading receipt of the BBC for any accounting period ending before the time when the transfer takes effect; or
    - (ii) an amount falling to be so brought into account if it is assumed, where it is not the case, that the accounting period of the BBC

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current on the day before the transfer takes effect ends immediately before that time; or

- (c) the whole or any part of the amount of a liability which falls for the purposes of corporation tax—
- (i) to be brought into account as deductible in computing the profits of any trade carried on by the BBC for any accounting period ending before the time when the transfer takes effect; or
  - (ii) to be so brought into account if it is assumed, where it is not the case, that the accounting period of the BBC current on the day before the transfer takes effect ends immediately before that time.

*Corporation tax: group relief*

- 20 (1) None of the following, namely—
- (a) the existence of the powers of any Minister of the Crown or the BBC under Part VI of this Act or under the documents regulating the BBC,
  - (b) any direction given by a Minister of the Crown under that Part or those documents, so far as that direction relates to a transfer scheme or (in a case where there is a preparatory scheme) to the sale of shares or securities issued by the successor company, or
  - (c) any arrangements (of any kind, whether in writing or not) so far as relating to a transfer scheme or any such sale,
- shall be regarded as constituting arrangements falling within subsection (1) or (2) of section 410 of the Taxes Act 1988 (arrangements for the transfer of a company to another group or consortium).
- (2) Neither—
- (a) the existence of the powers of any Minister of the Crown or the BBC under Part VI of this Act or under the documents regulating the BBC, nor
  - (b) any direction given as mentioned in sub-paragraph (1)(b),
- shall be regarded as constituting option arrangements for the purposes of paragraph 5B of Schedule 18 to the Taxes Act 1988.
- (3) Any reference in sub-paragraph (1) or (2) to the documents regulating the BBC is a reference to those documents only so far as they have effect in relation to a disposal by the BBC of—
- (a) the whole or any part of the BBC transmission network, or
  - (b) any shares or securities of a successor company,
- or the initiating, advancing or facilitating of any such disposal.
- (4) In this paragraph “Minister of the Crown” has the same meaning as in the Ministers of the <sup>M32</sup>Crown Act 1975.

**Marginal Citations**

M32 1975 c. 26.

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*Corporation tax: leases at an undervalue*

- 21 (1) Section 35 of the Taxes Act 1988 (charge on lease granted at an undervalue) shall not apply in the case of any lease which, in accordance with a transfer scheme, is granted—
- (a) to a company which is a transferee under that or any other transfer scheme, or
  - (b) by such a company to the BBC.
- (2) Section 87 of the Taxes Act 1988 (taxable premiums) shall not apply where there is an amount which would have become chargeable in relation to any land but for sub-paragraph (1); and, accordingly, references to any such amount shall not be included in references in that section to the amount chargeable.
- (3) In this paragraph “lease” has the same meaning as in Part II of the Taxes Act 1988.

*Corporation tax: sale and lease-back*

- 22 (1) Section 779 of the Taxes Act 1988 (sale and lease-back: limitation on tax reliefs) shall not apply where the liability of the transferor or of the person associated with that transferor is as a result of—
- (a) the creation, in accordance with a transfer scheme, of any interest or right in favour of a transferee or the BBC;
  - (b) any other transaction for which a transfer scheme provides; or
  - (c) the grant by a company which is a transferee under a transfer scheme (“the relevant company”) to the BBC or to another company which is a transferee (whether under that or any other transfer scheme) of any interest or right, at a time when the relevant company remains a wholly-owned subsidiary of the BBC, in a case where the ability of the relevant company to grant that interest or right derives from the transfer to the company in accordance with a transfer scheme of an estate or interest in land.
- (2) In this paragraph “transferor” has the same meaning as in section 779 of the Taxes Act 1988 and “associated” shall be construed in accordance with that section.

*Corporation tax: sale of lease of land*

- 23 (1) Section 780 of the Taxes Act 1988 (sale and lease-back: taxation of consideration) shall not apply where—
- (a) the assignment of the original lease, and
  - (b) the grant or assignment of the new lease,
- each fall within sub-paragraph (2).
- (2) The assignment of the original lease, or the grant or assignment of the new lease, falls within this sub-paragraph if—
- (a) it is a relevant transfer; or
  - (b) it takes place between the BBC and a successor company at a time when the successor company remains a wholly-owned subsidiary of the BBC; or
  - (c) it takes place between two successor companies at a time when both remain wholly-owned subsidiaries of the BBC.
- (3) The reference in sub-paragraph (1) to the assignment of the original lease and the grant or assignment of the new lease shall be construed in accordance with

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section 780 of the Taxes Act 1988 and sub-paragraph (2) shall be construed accordingly.

*Corporation tax: leased assets*

- 24 (1) For the purposes of section 781 of the Taxes Act 1988 (assets leased to traders and others) where the interest of the lessor or the lessee under a lease, or any other interest in an asset, is transferred in accordance with a transfer scheme to the BBC or a transferee, the transfer shall be treated as being effected without any capital sum having been obtained in respect of that interest by the BBC or the transferee.
- (2) Section 782 of the Taxes Act 1988 (deduction of payment under leases: special cases) shall not apply to any payments made by the BBC or a company which is a transferee under a transfer scheme if the payments are made—
- (a) under any lease created in favour of the BBC or such a company by virtue of, or in pursuance of an obligation imposed by, a provision contained in a transfer scheme by virtue of paragraph 2 of Schedule 5; or
  - (b) under any lease—
    - (i) which is granted to or by a successor company at a time when it remains a wholly-owned subsidiary of the BBC; and
    - (ii) which is a lease of an asset which at any time before the creation of the lease was used by the BBC for the purposes of a trade carried on by the BBC and which was, when so used, owned by the BBC.
- (3) In this paragraph “lease” and “asset” have the meaning given by section 785 of the Taxes Act 1988.

*Stamp duty*

- 25 (1) Stamp duty shall not be chargeable on any agreement or instrument to the extent that it is certified by the Secretary of State to the Commissioners of Inland Revenue as being—
- (a) a restructuring scheme,
  - (b) a restructuring scheme modification agreement, or
  - (c) an instrument giving effect to a restructuring scheme modification agreement,
- or as having been made in accordance with, or in pursuance of an obligation imposed by, a restructuring scheme.
- (2) No agreement or instrument which is certified as mentioned in sub-paragraph (1) shall be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would be liable, apart from that sub-paragraph; or
  - (b) it has, in accordance with section 12 of the <sup>M33</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (3) Section 12 of the <sup>M34</sup>Finance Act 1895 (collection of stamp duty in cases of property vested by Act or purchased under statutory power) shall not operate to require—
- (a) the delivery to the Commissioners of Inland Revenue of a copy of this Act, or
  - (b) the payment of stamp duty under that section on any copy of this Act,



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and shall not apply in relation to any instrument on which, by virtue of the preceding provisions of this paragraph, stamp duty is not chargeable.

(4) In this paragraph—

“restructuring scheme modification agreement” means a modification agreement, so far as relating to a restructuring scheme;

“restructuring scheme” means a preparatory scheme, so far as it provides for the transfer of property, rights or liabilities in accordance with the scheme—

- (a) from the BBC to a wholly-owned subsidiary of the BBC;
- (b) to the BBC from a wholly-owned subsidiary of the BBC; or
- (c) from one wholly-owned subsidiary of the BBC to another.

#### Marginal Citations

M33 1891 c. 39.

M34 1895 c. 16.

#### *Stamp duty reserve tax*

- 26 (1) An agreement to transfer chargeable securities, as defined in section 99 of the <sup>M35</sup>Finance Act 1986, from the BBC to a wholly-owned subsidiary of the BBC shall not give rise to a charge to stamp duty reserve tax if the agreement is made for the purposes of, or for purposes connected with, a restructuring scheme.
- (2) An agreement shall not give rise to a charge to stamp duty reserve tax if the agreement is a restructuring scheme modification agreement.
- (3) In this paragraph “restructuring scheme” and “restructuring scheme modification agreement” have the same meaning as in paragraph 25.

#### Marginal Citations

M35 1986 c. 41.

#### *Modifications of transfer schemes*

- 27 (1) If the effect of any transfer scheme is modified in pursuance of a modification agreement, then the Corporation Tax Acts and this Schedule, other than paragraphs 25 and 26, shall have effect as if—
- (a) the scheme originally made had been the scheme as modified; and
  - (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.
- (2) If, in a case falling within sub-paragraph (1), the transfer scheme, as originally made, was a preparatory scheme, the scheme as modified shall be taken to be a preparatory scheme, whether or not any company which was a wholly-owned subsidiary of the

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BBC at the time when the preparatory scheme took effect remains a wholly-owned subsidiary of the BBC at the time when the modification takes effect.

### *Orders*

- 28 (1) The Secretary of State shall not make an order under this Schedule in relation to any transferee under a transfer scheme except—
- (a) with the consent of the Treasury;
  - (b) after consultation with the BBC; and
  - (c) if the transferee is not a wholly-owned subsidiary of the BBC, after consultation with the transferee.
- (2) Any power of the Secretary of State to make an order under this Part of this Schedule—
- (a) shall be exercisable by statutory instrument; and
  - (b) shall include power to make different provision for different cases, including different provision in relation to different assets or descriptions of assets.

## SCHEDULE 8

Section 136.

### AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO SERVICES PROVIDED BY BBC COMPANIES

#### *Television services*

- 1 In section 3 of the 1990 Act (licences under Part I) after subsection (3) there is inserted—
- “(3A) Where the Commission are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.”
- 2 (1) Section 5 of that Act (restrictions on the holding of licences) is amended as follows.
- (2) After subsection (2) there is inserted—
- “(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Commission shall give the Secretary of State notice of their intention to do so, specifying the relevant change.”
- (3) After subsection (6B) there is inserted—
- “(6C) The Commission shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.
- (6D) Where the Commission receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.”
- 3 After section 66 of that Act there is inserted—

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**“66A Enforcement of licences held by BBC companies.**

(1) Where the Commission—

- (a) give a direction to a BBC company under section 40(1),
- (b) serve a notice on a BBC company under any provision of section 41 or 42, or
- (c) receive any written representations from a BBC company under section 40(2), 41(3) or 42(8),

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

(2) References in subsection (1) to any of the provisions of sections 40 to 42 are references to that provision as applied—

- (a) by section 42B(2), in relation to a licence to provide a restricted service,
- (b) by section 44(3), in relation to a licence to provide a domestic satellite service,
- (c) by section 45(5), in relation to a licence to provide a non-domestic satellite service,
- (d) by section 47(8), in relation to a licence to provide a licensable programme service, or
- (e) by section 55(4), in relation to an additional services licence.”

4 In section 81 of that Act (enforcement of local delivery service licences), after subsection (2) there is inserted—

“(2A) Where the Commission—

- (a) serve a notice on a BBC company under any provision of section 41 or 42 (as applied by subsection (1)), or
- (b) receive any representations from a BBC company under section 40(2), 41(3) or 42(8) (as so applied),

the Commission shall send a copy of the notice or representations to the Secretary of State.”

*Radio services*

5 In section 86 of that Act (licences under Part III) after subsection (4) there is inserted—

“(4A) Where the Authority are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.”

6 (1) Section 88 of that Act (restrictions on the holding of licences) is amended as follows.

(2) After subsection (2) there is inserted—

“(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Authority shall give the Secretary of State notice of their intention to do so, specifying the relevant change.”

(3) After subsection (6B) there is inserted—

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“(6C) The Authority shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.

(6D) Where the Authority receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.”

7 After section 111 of that Act there is inserted—

**“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.”

*Meaning of “BBC company” for purposes of Broadcasting Act 1990*

8 In section 202 of that Act (interpretation), after the definition of “the BBC” there is inserted—

““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);”.

SCHEDULE 9

Section 138.

AMENDMENTS OF COPYRIGHT, DESIGNS AND PATENTS  
ACT 1988 RELATING TO CABLE PROGRAMME SERVICES

1 For section 73 of the <sup>M36</sup>Copyright, Designs and Patents Act 1988 there is substituted—

**“73 Reception and re-transmission of broadcast in cable programme service.**

(1) This section applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.

(2) The copyright in the broadcast is not infringed—

(a) if the inclusion is in pursuance of a relevant requirement, or

(b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided and forms part of a qualifying service.

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- (3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (4) Where—
- (a) the inclusion is in pursuance of a relevant requirement, but
  - (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (5) Subsection (4) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that subsection) licensed by the owner of the copyright in the work.
- (6) In this section “qualifying service” means, subject to subsection (8), any of the following services—
- (a) a regional or national Channel 3 service,
  - (b) Channel 4, Channel 5 and S4C,
  - (c) the teletext service referred to in section 49(2) of the <sup>M37</sup>Broadcasting Act 1990,
  - (d) the service referred to in section 57(1A)(a) of that Act (power of S4C to provide digital service), and
  - (e) the television broadcasting services and teletext service of the British Broadcasting Corporation;
- and expressions used in this subsection have the same meaning as in Part I of the <sup>M38</sup>Broadcasting Act 1990.
- (7) In this section “relevant requirement” means a requirement imposed under—
- (a) section 78A of the Broadcasting Act 1990 (inclusion of certain services in local delivery services provided by digital means), or
  - (b) paragraph 4 of Part III of Schedule 12 to that Act (inclusion of certain services in diffusion services originally licensed under the <sup>M39</sup>Cable and Broadcasting Act 1984).
- (8) The Secretary of State may by order amend subsection (6) so as to add any service to, or remove any service from, the definition of “qualifying service”.
- (9) The Secretary of State may also by order—
- (a) provide that in specified cases subsection (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or

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- (b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.
- (10) Where the Secretary of State exercises the power conferred by subsection (9) (b) in relation to broadcasts of any description, the order may also provide for subsection (4) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (11) An order under this section may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (12) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **73A Royalty or other sum payable in pursuance of section 73(4).**

- (1) An application to settle the royalty or other sum payable in pursuance of subsection (4) of section 73 (reception and re-transmission of broadcast in cable programme service) may be made to the Copyright Tribunal by the copyright owner or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.
- (5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.”

#### **Marginal Citations**

- M36** 1988 c. 48.  
**M37** 1990 c. 42.  
**M38** 1990 c. 42.  
**M39** 1984 c. 46.

- 2 (1) Section 134 of that Act (licences in respect of works included in re-transmissions) is amended as follows.
- (2) At the beginning of subsection (1) there is inserted “Subject to subsection (3A)”.
- (3) After subsection (3) there is inserted—
- “(3A) This section does not apply in relation to any application under section 73A (royalty or other sum payable in pursuance of section 73(4)).”
- 3 In section 149 of that Act (jurisdiction of Copyright Tribunal), before paragraph (a) there is inserted—

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- “(za) section 73 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including work);”.
- 4 In section 205B of that Act (jurisdiction of Copyright Tribunal under Part II), after paragraph (c) there is inserted—
- “(cc) paragraph 19 of Schedule 2 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including performance or recording);”.
- 5 For paragraph 19 of Schedule 2 to that Act there is substituted—

*“ Reception and re-transmission of broadcast in cable programme service*

- 19 (1) This paragraph applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (3) Where—
- (a) the inclusion is in pursuance of a relevant requirement, but
- (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by Part II in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (4) Sub-paragraph (3) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that sub-paragraph) licensed by the owner of the rights conferred by Part II in relation to the performance or recording.
- (5) The Secretary of State may by order—
- (a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
- (b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.

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- (6) Where the Secretary of State exercises the power conferred by sub-paragraph (5)(b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Expressions used in this paragraph have the same meaning as in section 73.”

6 After paragraph 19 of Schedule 2 to that Act there is inserted—

- “19A (1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by Part II or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.
- (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.”

## SCHEDULE 10

Section 148(1).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

##### AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO DIGITAL TERRESTRIAL BROADCASTING

- 1 (1) Section 2 of the 1990 Act (regulation by Commission of provision of television services) is amended as follows.
- (2) In subsection (1)—



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- (a) after “this Part” there is inserted “ and Part I of the Broadcasting Act 1996 ”, and
  - (b) after paragraph (b) there is inserted—
    - “(c) multiplex services (as defined by section 1(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC, and
    - (d) digital additional services (as defined by section 24(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC”.
- (3) In subsection (2)—
- (a) in paragraph (a) after “Part II” there is inserted “ and under Part I of the Broadcasting Act 1996 ”, and
  - (b) in paragraph (b)—
    - (i) after “this Part” there is inserted “ and Part I of the Broadcasting Act 1996 ”,
    - (ii) after “television programme services” there is inserted “ and multiplex services (as defined by section 1(1) of that Act) ”, and
    - (iii) for “such services” there is substituted “ television programme services. ”
- (4) In subsection (4), in the definition of “television programme service”, after paragraph (c) there is inserted—
- “or
- (d) a digital programme service (as defined by section 1(4) of the Broadcasting Act 1996).”
- (5) At the end of subsection (5) there is inserted “ but not including a restricted service (as defined by section 42A) or a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996) ”.
- 2 In section 13 of the 1990 Act (prohibition on providing television services without a licence), in subsection (1)—
- (a) for “or (b)” there is substituted “ ,(b), (c) or (d) ”, and
  - (b) after “this Part” there is inserted “ or Part I of the Broadcasting Act 1996 ”.
- 3 In section 69 of the 1990 Act (frequency planning and development), in subsection (4), after “Part II” there is inserted “ or Part I of the Broadcasting Act 1996 ”.
- 4 In section 72 of the 1990 Act (local delivery services), in subsection (2)—
- (a) after paragraph (c) there is inserted—
    - “(cc) any digital programme service (as defined by section 1(4) of the Broadcasting Act 1996);”, and
  - (b) at the end there is inserted “and
    - (f) any digital sound programme service (as defined by section 40(5) of the Broadcasting Act 1996).”
- 5 In section 84 of the 1990 Act (regulation by Authority of independent radio services), in subsection (1)—
- (a) after “this Part” there is inserted “ and Part II of the Broadcasting Act 1996 ”, and

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- (b) after paragraph (c) there is inserted—
- “(d) radio multiplex services (as defined by section 40(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC;
  - (e) digital sound programme services (as defined by section 40(5) of that Act) which are provided from places in the United Kingdom by persons other than the BBC; and
  - (f) digital additional services (as defined by section 63(1) of that Act) which are provided from places in the United Kingdom by persons other than the BBC;”.
- 6 In section 85 of the 1990 Act (licensing functions of Authority), in subsection (3)—
- (a) after “independent radio services” there is inserted “ and services falling within section 84(1)(d), (e) and (f) ”, and
  - (b) in paragraph (a) after “licensed services” there is inserted “ (including digital sound programme services licensed under Part II of the Broadcasting Act 1996) ”.
- 7 In section 97 of the 1990 Act (prohibition on providing independent radio services without a licence), in subsection (1)—
- (a) after “independent radio service” there is inserted “ or any service falling within section 84(1)(d), (e) or (f) ”, and
  - (b) after “this Part” there is inserted “ or Part II of the Broadcasting Act 1996 ”.
- 8 In section 112 of the 1990 Act (licensable sound programme services), in subsection (2)(a), after “sound broadcasting service” there is inserted “ or a radio multiplex service (as defined by section 40(1) of the Broadcasting Act 1996) ”.
- 9 In section 126 of the 1990 Act (interpretation of Part III), at the end of the definition of “sound broadcasting service” there is inserted “ but does not include a radio multiplex service (as defined by section 40(1) of the Broadcasting Act 1996) ”.
- 10 In section 176 of the 1990 Act (duty to provide advance information about programmes), in subsection (7), in the first column of the table—
- (a) after “Welsh Authority” there is inserted “ and the service referred to in section 57(1A)(a) ”, and
  - (b) after “Radio Authority” there is inserted “ , any simulcast radio service (within the meaning of Part II of the Broadcasting Act 1996), and any national digital sound programme service (within the meaning of that Part of that Act) subject to regulation by the Radio Authority ”.
- 11 In section 201 of the 1990 Act (meaning of “programme service”), after paragraph (b) there is inserted—
- “(bb) any digital sound programme service (within the meaning of Part II of the Broadcasting Act 1996)”.

## PART II

### OTHER AMENDMENTS OF BROADCASTING ACT 1990

- 12 In section 2 of the 1990 Act (regulation by Commission of provision of television services), in subsection (4), in the definition of “television programme service”, after paragraph (a) there is inserted—

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“(aa) a restricted service (as defined by section 42A);”.

13 In section 6 of the 1990 Act (general requirements as to licensed services), in subsection (8), for “the teletext service referred to in section 49(2)” there is substituted “ a teletext service ”.

14 In section 33 of the 1990 Act (conditions requiring holder of Channel 3 or Channel 5 licence to deliver licensed service), in subsection (3), after “subsection (1)” there is inserted “ or section 21A(3) or (4) ”.

F56 15 .....

#### Textual Amendments

F56 S. 15 repealed (11.7.1997) by S.I. 1997/1682, reg. 6(1)

16 In section 46 of the 1990 Act (licensable programme services), in subsection (2) (a), after “television broadcasting service” there is inserted “ a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996), a restricted service ”.

#### Commencement Information

I16 Sch. 10 para. 16 wholly in force at 1.4.1997; Sch. 10 para. 16 not in force at Royal Assent see s. 149; Sch. 10 para. 16 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 16 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

17 In section 71 of the 1990 Act (interpretation of Part I), after the definition of “regional Channel 3 service” there is inserted—

““restricted service” has the meaning given by section 42A;”.

18 In section 72 of the 1990 Act (local delivery services), in subsection (2) after paragraph (a) there is inserted—

“(aa) any restricted service (within the meaning of that Part);”.

19 (1) Section 84 of the 1990 Act (regulation by Radio Authority of independent radio services) is amended as follows.

(2) In subsection (3), after “shall”, where first occurring, there is inserted “ subject to subsection (3A) ”.

(3) After that subsection there is inserted—

“(3A) For the purposes of this Part, any satellite service which is composed by, and transmitted for, a BBC company, a Channel 4 company or an S4C company—

(a) shall be regarded as provided by that company and not by the relevant broadcasting body (even if the relevant broadcasting body is in a position to determine what is to be included in the service), and

(b) shall be regarded as provided from a place in the United Kingdom.

(3B) In subsection (3A) “relevant broadcasting body” means—

(a) in relation to a BBC company, the BBC,

(b) in relation to a Channel 4 company, the Channel Four Television Corporation, and

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(c) in relation to an S4C company, the Welsh Authority.”

#### Commencement Information

**I17** Sch. 10 para. 19 wholly in force at 1.10.1996; Sch. 10 para. 19 in force for certain purposes at Royal Assent see s. 149(1); Sch. 10 para. 19 in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1

20 In section 188 of the 1990 Act (power to give broadcasting bodies etc. directions relating to international obligations), in subsection (2)(e), for “Broadcasting Standards Council” there is substituted “Broadcasting Standards Commission”.

21 In section 202(1) of the 1990 Act (interpretation)—

(a) after the definition of “broadcast” there is inserted—

““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);”

(b) in the definition of “connected”, for “licence” there is substituted “person”, and

(c) after the definition of “programme” there is inserted—

““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);”.

#### Commencement Information

**I18** Sch. 10 para. 21 wholly in force: Sch. 10 para. 21 not in force at royal assent, see s. 149(2); Sch. 10 para. 21(a)(c) in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 21(b) in force at 1.11.1996 by S.I. 1996/2120, art. 5, Sch. 2

22 In paragraph 2(1) of Schedule 1 to the 1990 Act (persons disqualified for membership of the Independent Television Commission), for paragraphs (c) and (d) there is substituted—

“or

(c) a member or employee of the Broadcasting Standards Commission.”

23 In paragraph 2(1) of Schedule 3 to the 1990 Act (persons disqualified for membership of the Channel Four Television Corporation), for paragraphs (d) and (e) there is substituted—

“or

(d) a member or employee of the Broadcasting Standards Commission.”

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- 24 In paragraph 2(1) of Schedule 6 to the 1990 Act (persons disqualified for membership of the Welsh Authority), for paragraphs (b) and (c) there is substituted—
- “or
- (b) a member or employee of the Broadcasting Standards Commission.”
- 25 In paragraph 2(1) of Schedule 8 to the 1990 Act (persons disqualified for membership of the Radio Authority), for paragraphs (d) and (e) there is substituted—
- “or
- (d) a member or employee of the Broadcasting Standards Commission.”
- 26 In Schedule 19 to the 1990 Act (the Gaelic Broadcasting Committee: supplementary provisions)—
- (a) in paragraph 8—
- (i) for “Gaelic Television Fund” there is substituted “ Gaelic Broadcasting Fund ”; and
- (ii) in sub-paragraph (c), after “Commission” there is inserted “ and (where the expenses relate to the Commission’s functions in connection with sound programmes) the Radio Authority ”; and
- (b) in paragraph 11(4)—
- (i) after “Commission” there is inserted “ or the Radio Authority ”; and
- (ii) for “them”, where it first occurs, there is substituted “ the Commission or, as the case may be, the Authority ”.

### PART III

#### AMENDMENTS OF OTHER ENACTMENTS

##### *The Welsh Development Agency Act 1975 (c. 70)*

- 27 In section 19 of the Welsh Development Agency Act 1975 (the Agency and the media), in subsection (11)—
- (a) in the definition of “the appropriate authority”—
- (i) in paragraph (a), after “Act 1990” there is inserted “ or Part I of the Broadcasting Act 1996 ”, and
- (ii) in paragraph (b), for “that Act” there is substituted “ the Broadcasting Act 1990 or Part II of the Broadcasting Act 1996 ”, and
- (b) in the definition of “relevant licence” for “(as the case may be) Part III of that Act” there is substituted “ III of the Broadcasting Act 1990 or Part I or II of the Broadcasting Act 1996. ”

##### *The Representation of the People Act 1983 (c. 2)*

- 28 In section 75 of the Representation of the People Act 1983 (prohibition of expenses not authorised by election agent), in subsection (1)(i), after “Broadcasting Act 1990” there is inserted “ or Part I or II of the Broadcasting Act 1996 ”.

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<sup>F57</sup>29 .....

#### Textual Amendments

**F57** Sch. 10 para. 29 repealed (16.3.2001) by 2000 c. 41, s. 158(2), **Sch. 22** (with s. 156(6)); S.I. 2001/222, art. 3

30 Without prejudice to the generality of section 20(2) of the <sup>M40</sup>Interpretation Act 1978, any reference in paragraph 28 <sup>F58</sup>. . . to a provision of the Representation of the <sup>M41</sup>People Act 1983 includes a reference to that provision as applied by any regulations made under [<sup>F59</sup>section 7 of the European Parliamentary Elections Act 2002].

#### Textual Amendments

**F58** Words in Sch. 10 para. 30 repealed (16.3.2001) by 2000 c. 41, s. 158(2), **Sch. 22** (with s. 156(6)); S.I. 2001/222, art. 3

**F59** Words in Sch. 10 para. 30 substituted (24.10.2002) by European Parliamentary Elections Act 2002 (2002 c. 24), ss. 15, 18(2), **Sch. 3 para. 5**

#### Marginal Citations

**M40** 1978 c. 30.

**M41** 1978 c. 10.

#### *The Copyright, Designs and Patents Act 1988 (c. 48)*

31 In section 69 of the Copyright, Designs and Patents Act 1988 (recording for purposes of supervision and control of broadcasts and cable programmes), for subsections (2) and (3) there is substituted—

- “(2) Copyright is not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
  - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
  - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) Copyright is not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
  - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.”

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#### Commencement Information

**I19** Sch. 10 para. 31 wholly in force at 1.4.1997; Sch. 10 para. 31 not in force at Royal Assent see s. 149; Sch. 10 para. 31 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 31 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

32 In Schedule 2 to the Copyright, Designs and Patents Act 1988 (rights in performances: permitted acts), in paragraph 17, for sub-paragraphs (2) and (3) there is substituted—

“(2) The rights conferred by Part II are not infringed by anything done in pursuance of—

- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
- (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
- (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).

(3) The rights conferred by Part II are not infringed by—

- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
- (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.”

#### Commencement Information

**I20** Sch. 10 para. 32 wholly in force at 1.4.1997; Sch. 10 para. 32 not in force at Royal Assent see s. 149; Sch. 10 para. 32 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 32 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

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## SCHEDULE 11

Section 148(2).

## REPEALS AND REVOCATIONS

## PART I

## ENACTMENTS REPEALED

**Commencement Information**

**I21** Sch. 11 Pt. I wholly in force at 1.4.1997; Sch. 11 Pt. I in force for certain purposes at 24.7.1996 see s. 149; Sch. 11 Pt. I in force for certain further purposes at 1.10.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 11 Pt. I in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

Chapter	Short title	Extent of repeal
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Broadcasting Complaints Commission, the Broadcasting Standards Council and Comataidh Telebhisein Gaidhlig.
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Broadcasting Complaints Commission and the Broadcasting Standards Council.
1990 c. 42.	The Broadcasting Act 1990.	In section 2, in subsection (1) (a), the second “and” and, in subsection (4), in paragraph (b) of the definition of “television programme service”, the word “or”.  In section 32, in subsection (9), paragraph (b) and the word “and” immediately preceding it, in subsection (10) the words from “and for this purpose” onwards and in subsection (13)(a), the word “and”.  Section 45 (8) and (9).  Section 47 (11) and (12).



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In section 72(2)(d), the word “and”.

In section 84(1)(b), the word “and”.

Section 104(5) and (6)(a).

Sections 142 to 161.

Section 182.

In section 202(2), paragraph (a) and, in paragraph (b), the words “13,14”.

In Schedule 2, in Part I, paragraphs 1(4) and 2(2) and (3) and, in Part II, in paragraph 1(2)(e), the word “or” and paragraph 5(c) and (d).

Schedules 13 and 14.

In Schedule 19, paragraph 3.

In Schedule 20, paragraph 50.

## PART II

### SUBORDINATE LEGISLATION REVOKED

#### Commencement Information

**I22** Sch. 11 Pt. II wholly in force at 1.4.1997; Sch. 11 Pt. II not in force at Royal Assent see s. 149; Sch. 11 in force for certain purposes at 1.10.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 11 Pt. II in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

Number	Title	Extent of revocation
S.I. 1991/1176.	The Broadcasting (Restrictions on the Holding of Licences) Order 1991.	Article 2, and Parts II, III and IV.
S.I. 1991/1246.	The Cable (Excepted Programmes) Order 1991.	The whole order.
S.I.1993/3199.	The Broadcasting (Restrictions on the Holding of Licences) (Amendment) Order 1993.	The whole order.
S.I. 1995/1924.	The Broadcasting (Restrictions on the Holding	The whole order.

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of Licences) (Amendment)  
Order 1995.

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**Changes to legislation:**

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