

Status: Point in time view as at 01/10/2009.

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SCHEDULES

SCHEDULE 1

Sections 37, 70.

MULTIPLEX REVENUE: SUPPLEMENTARY PROVISIONS

Modifications etc. (not altering text)

C1 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 [F1OFCOM] 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 [F1OFCOM] shall consult the Secretary of State and the Treasury.
- (4) [F1OFCOM] 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.

Textual Amendments

F1 Words in Sch. 1 Pt. 1 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 142(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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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
 - (b) the amount of any payment to be made to [F¹OFCOM] 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 [F¹OFCOM] and that person, be the amount determined by [F¹OFCOM] .
- (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 [F¹OFCOM] and that person, be the amount determined by [F¹OFCOM] .
- (3) No determination of [F¹OFCOM] 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.

Textual Amendments

- F1** Words in Sch. 1 Pt. 1 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 142\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

PART II

MULTIPLEX REVENUE FOR PURPOSES OF PART II OF THIS ACT

Computation of multiplex revenue

- 3 (1) It shall be the duty of [F²OFCOM] 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 [F²OFCOM] shall consult the Secretary of State and the Treasury.
- (4) [F²OFCOM] shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and

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- (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.

Textual Amendments

F2 Words in Sch. 1 Pt. 2 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 142\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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
- (b) the amount of any payment to be made to [F²OFCOM] 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 [F²OFCOM] and that person, be the amount determined by [F²OFCOM] .
- (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 [F²OFCOM] and that person, be the amount determined by [F²OFCOM] .
- (3) No determination of [F²OFCOM] 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.

Textual Amendments

F2 Words in Sch. 1 Pt. 2 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 142\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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.

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(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 ”,

^{F3}(d)

^{F3}(e)

^{F3}(f)

(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

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(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.

(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.”

Textual Amendments

F3 Sch. 2 para. 1(2)(d)-(f) 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](#))

Commencement Information

II 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)—

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- (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

I2 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—

- “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

I3 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

F44

Textual Amendments

F4 Sch. 2 para. 4 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)

F55

Textual Amendments

F5 Sch. 2 para. 5 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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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);”.

^{F6}(3)

Textual Amendments

F6 Sch. 2 para. 6(3) 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)

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

I4 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

I5 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

- I6** 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

F710

Textual Amendments

- F7** Sch. 2 para. 10 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)

PART IV

PROVISIONS SUBSTITUTED FOR PART IV OF SCHEDULE 2

F811

Textual Amendments

- F8** Sch. 2 para. 11 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)

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)—

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- (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—
- “(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

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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) ”.

F⁹SCHEDULE 3

Section 106(3).

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Textual Amendments

F9 Sch. 3 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)

F¹⁰SCHEDULE 4

Section 128.

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Textual Amendments

F10 Sch. 4 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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SCHEDULE 5

Section 131(4).

TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUPPLEMENTARY PROVISIONS

Modifications etc. (not altering text)

- C2** 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
 - (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—

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- (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 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.

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- (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
 - (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.

Status: Point in time view as at 01/10/2009.

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- (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
 - (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 ^{M1}Law of Property Act 1925 (production and safe custody of documents) or section 9 of the ^{M2}Conveyancing Act 1881 (the corresponding

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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 ^{M3}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

M1 1925 c. 20.

M2 1881 c. 41.

M3 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.

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.

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- (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,
- 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.

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- (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 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

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- (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.
- (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 [F11section 1159 of the Companies Act 2006] ,
 - (b) the Secretary of State, or

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- (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.

Textual Amendments

- F11** Words in [Sch. 5 para. 8\(8\)\(a\)](#) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 162\(b\)](#) (with art. 10)

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.

SCHEDULE 6

Section 134.

TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUCCESSOR COMPANIES

Interpretation

- 1 (1) In this Schedule—
- “the Charter” means the ^{M4}Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation;

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“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 [F12section 1159 of the Companies Act 2006] .

- (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.

Textual Amendments

F12 Words in [Sch. 6 para. 1\(1\)](#) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 162\(c\)](#) (with art. 10)

Marginal Citations

M4 Cm. 3248.

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.
- (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

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- (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 [F13the Companies Act 2006] .

Textual Amendments

F13 Words in *Sch. 6 para. 2(5)* substituted (6.4.2008) by *The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948)*, art. 2(2), *Sch. 1 para. 203(2)* (with arts. 6, 11, 12)

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—
- its called-up share capital, and
 - 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 [F14section 830 of the Companies Act 2006] 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 [F15section 831 of the Companies Act 2006] 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.
- (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.

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(6) In this paragraph—

“called-up share capital” has the same meaning as in the [F16Companies Act 2006] ;

“net assets” has the meaning given by subsection (2) of [F17section 831 of the Companies Act 2006] ;

“undistributable reserves” has the meaning given by [F18subsection (4) 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.

Textual Amendments

- F14** Words in Sch. 6 para. 3(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(3)** (with arts. 6, 11, 12)
- F15** Words in Sch. 6 para. 3(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(4)** (with arts. 6, 11, 12)
- F16** Words in Sch. 6 para. 3(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(5)(a)** (with arts. 6, 11, 12)
- F17** Words in Sch. 6 para. 3(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(5)(b)** (with arts. 6, 11, 12)
- F18** Words in Sch. 6 para. 3(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(5)(c)** (with arts. 6, 11, 12)

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, [F19sections 836 to 840 of the Companies Act 2006] shall have effect as if—
- (a) references in [F20section 836] to the company’s accounts or to accounts relevant under that section, and
 - (b) references in [F21section 839] to initial accounts,
- included references to such accounts as, on the assumptions stated in subparagraph (2), would have been prepared under [F22section 394] 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

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- 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
- (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 [F23]section 391 of the Companies Act 2006] ;
- “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.

Textual Amendments

- F19** Words in Sch. 6 para. 4(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(a)** (with arts. 6, 11, 12)
- F20** Words in Sch. 6 para. 4(1)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(b)** (with arts. 6, 11, 12)
- F21** Words in Sch. 6 para. 4(1)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(c)** (with arts. 6, 11, 12)
- F22** Words in Sch. 6 para. 4(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(d)** (with arts. 6, 11, 12)
- F23** Words in Sch. 6 para. 4(5) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(7)** (with arts. 6, 11, 12)

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 ^{M5}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—

Status: Point in time view as at 01/10/2009.

Changes to legislation: Broadcasting Act 1996 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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

M5 1961 c. 62.

SCHEDULE 7

Section 135.

TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: TAXATION PROVISIONS

Interpretation

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

^{F24}

...

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

[^{F25}“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 ^{M6}Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation; and

(b) the ^{M7}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 ^{M8}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;

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“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 ^{M9}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”—

- (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 [^{F26}section 1159 of the Companies Act 2006] .

- (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 [^{F27}the Capital Allowances Act].

Textual Amendments

- F24** 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
- F25** 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)
- F26** Words in Sch. 7 para. 1(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 162(d) (with art. 10)
- F27** 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)

Status: Point in time view as at 01/10/2009.

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Marginal Citations

- M6** Cm. 3248.
M7 Cm. 3152.
M8 1992 c. 12.
M9 1988 c. 1.

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.

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

F28 3

Textual Amendments

- F28** Sch. 7 para. 3 omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 70(d)

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.

Status: Point in time view as at 01/10/2009.

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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.

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).

Status: Point in time view as at 01/10/2009.

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- (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—
- (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,

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- (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.

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

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- (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
 - (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 [F29Part 5 of the Corporation Tax Act 2009] 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.

Textual Amendments

F29 Words in *Sch. 7 para. 11(2)* substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(2)* (with *Sch. 2 Pts. 1, 2*)

Transfer of trade: loss relief and capital allowances

- 12 (1) This paragraph applies in any case where, as a result of a relevant transfer,—

Status: Point in time view as at 01/10/2009.

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- (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 [^{F30}the Capital Allowances Act]; but—
- (a) there shall be made to or on the transferee in accordance with [^{F31}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—
- (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

F30 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\(3\)\(a\)](#)

F31 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 ^{F32} . . .

Textual Amendments

F32 [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](#)

Status: Point in time view as at 01/10/2009.

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- 13 (1) This paragraph applies in any case where there is a relevant transfer of property which is, for the purposes of [^{F33}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 [^{F34}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

F33 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)**

F34 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)**

Capital allowances: [^{F35}plant and machinery]

Textual Amendments

F35 *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 [^{F36}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

F36 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)**

Status: Point in time view as at 01/10/2009.

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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 [^{F37}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 [^{F38}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) [^{F39}subsection (1)(d)] of that section shall be disregarded.
- (3) Where the conditions in [^{F40}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 [^{F41}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.

Textual Amendments

- F37** 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\(7\)\(a\)](#)
- F38** 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\(7\)\(b\)](#)
- F39** 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\(7\)\(c\)](#)
- F40** 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\(8\)\(a\)](#)
- F41** 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 [^{F42}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

- F42** 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\(9\)](#)

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[^{F43} Capital allowances: agricultural buildings allowances]

Textual Amendments

F43 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)

- [^{F44}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.]

Textual Amendments

F44 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

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- (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 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,

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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 ^{M10}Crown Act 1975.

Marginal Citations

M10 1975 c. 26.

Corporation tax: leases at an undervalue

- 21 (1) [^{F45}Section 222 of the Corporation Tax Act 2009 (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) [^{F46}Sections 62 to 67 of the Corporation Tax Act 2009 (tenants occupying land for purposes of trade treated as incurring expenses)] 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 [^{F46}those sections to the taxed receipt] .
- (3) In this paragraph “lease” has the same meaning as in [^{F47}Part 4 of the Corporation Tax Act 2009 (see section 291 of that Act)] .

Textual Amendments

F45 Words in Sch. 7 para. 21(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(3)(a)* (with Sch. 2 Pts. 1, 2)

F46 Words in Sch. 7 para. 21(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(3)(b)* (with Sch. 2 Pts. 1, 2)

F47 Words in Sch. 7 para. 21(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(3)(c)* (with Sch. 2 Pts. 1, 2)

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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 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—

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- (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.

[^{F48}Stamp duty and stamp duty land tax]

Textual Amendments

F48 Sch. 7 para. 25 heading substituted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), reg. 1, Sch. para. 25(2)

- 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.
- ^{F49}(1A) A land transaction which is effected by a restructuring scheme, or effected in accordance with, or in pursuance of an obligation imposed by a restructuring scheme is exempt from charge for the purposes of stamp duty land tax.
- (1B) Relief under sub-paragraph (1A) must be claimed in a land transaction return or an amendment of such a return.]
- (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 ^{M11}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 ^{M12}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,
- 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.

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(4) In this paragraph—

[^{F50}“land transaction” has the meaning given in section 43(1) of the Finance Act 2003;

“land transaction return” has the meaning given by section 76(1) of that Act;]

“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.

Textual Amendments

F49 Sch. 7 para. 25(1A)(1B) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, **Sch. para. 25(3)**

F50 Words in Sch. 7 para. 25(4) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, **Sch. para. 25(4)**

Marginal Citations

M11 1891 c. 39.

M12 1895 c. 16.

Stamp duty reserve tax

- 26 (1) An agreement to transfer chargeable securities, as defined in section 99 of the ^{M13}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

M13 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

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- (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 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—

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“(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—

“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.”

F514

Textual Amendments

F51 Sch. 8 para. 4 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)

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—

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“(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—

“(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 ^{M14}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—

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- (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.
- (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 ^{M15}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 ^{M16}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 ^{M17}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”.

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- (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
 - (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

- M14** 1988 c. 48.
M15 1990 c. 42.
M16 1990 c. 42.
M17 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—

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- “(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—
- “(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

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(b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.

(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

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Status: Point in time view as at 01/10/2009.

Changes to legislation: Broadcasting Act 1996 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F52 Sch. 10 para. 1 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)

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 ”.

F53₃

Textual Amendments

F53 Sch. 10 paras. 3-6 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)

F53₄

Textual Amendments

F53 Sch. 10 paras. 3-6 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)

F53₅

Textual Amendments

F53 Sch. 10 paras. 3-6 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)

F53₆

Textual Amendments

F53 Sch. 10 paras. 3-6 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)

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 ”.

F54₈

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Textual Amendments

F54 Sch. 10 para. 8 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)

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 ”.

F55 11

Textual Amendments

F55 Sch. 10 paras. 11-14 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)

PART II

OTHER AMENDMENTS OF BROADCASTING ACT 1990

F55 12

Textual Amendments

F55 Sch. 10 paras. 11-14 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)

F55 13

Textual Amendments

F55 Sch. 10 paras. 11-14 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)

F55 14

Textual Amendments

F55 Sch. 10 paras. 11-14 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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F56 15

Textual Amendments

F56 S. 15 repealed (11.7.1997) by S.I. 1997/1682, reg. 6(1)

F57 16

Textual Amendments

F57 Sch. 10 para. 16 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)

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;”.

F58 18

Textual Amendments

F58 Sch. 10 paras. 18-20 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)

F58 19

Textual Amendments

F58 Sch. 10 paras. 18-20 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)

F58 20

Textual Amendments

F58 Sch. 10 paras. 18-20 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)

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—

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““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

I7 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

^{F59}22

Textual Amendments

F59 Sch. 10 paras. 22-25 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)

^{F59}23

Textual Amendments

F59 Sch. 10 paras. 22-25 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)

^{F59}24

Textual Amendments

F59 Sch. 10 paras. 22-25 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)

^{F59}25

Textual Amendments

F59 Sch. 10 paras. 22-25 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)

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

^{F60}(ii)

^{F61}(b)

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Textual Amendments

- F60** Sch. 10 para. 26(a)(ii) 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)
- F61** Sch. 10 para. 26(b) 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)

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)—
- ^{F62}(a)
- (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. ”

Textual Amendments

- F62** Sch. 10 para. 27(a) 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)

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 ”.
- ^{F63}29

Textual Amendments

- F63** 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 ^{M18}Interpretation Act 1978, any reference in paragraph 28 ^{F64}. . . to a provision of the Representation of the ^{M19}People Act 1983 includes a reference to that provision as applied by any regulations made under [^{F65}section 7 of the European Parliamentary Elections Act 2002].

Textual Amendments

- F64** 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

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F65 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

M18 1978 c. 30.

M19 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.”

Commencement Information

I8 [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

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- (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

19 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

SCHEDULE 11

Section 148(2).

REPEALS AND REVOCATIONS

PART I

ENACTMENTS REPEALED

Commencement Information

110 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

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1990 c. 42.	The Broadcasting Act 1990.	<p>Commission and the Broadcasting Standards Council.</p> <p>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”.</p> <p>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”.</p> <p>Section 45 (8) and (9).</p> <p>Section 47 (11) and (12).</p> <p>In section 72(2)(d), the word “and”.</p> <p>In section 84(1)(b), the word “and”.</p> <p>Section 104(5) and (6)(a).</p> <p>Sections 142 to 161.</p> <p>Section 182.</p> <p>In section 202(2), paragraph (a) and, in paragraph (b), the words “13,14”.</p> <p>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).</p> <p>Schedules 13 and 14.</p> <p>In Schedule 19, paragraph 3.</p> <p>In Schedule 20, paragraph 50.</p>
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PART II

SUBORDINATE LEGISLATION REVOKED

Commencement Information

III 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 of Licences) (Amendment) Order 1995.	The whole order.

Status:

Point in time view as at 01/10/2009.

Changes to legislation:

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