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## SCHEDULES

### SCHEDULE 13

#### FINANCIAL PENALTIES UNDER THE BROADCASTING ACTS

##### PART 1

##### BROADCASTING ACT 1990

###### *Preliminary*

1 The 1990 Act shall be amended as follows.

###### **Commencement Information**

**II** Sch. 13 para. 1 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

###### *Revocation of television services licence*

- 2 (1) In subsection (3) of section 18 (penalty on revocation of television services licence), for “a financial penalty of the prescribed amount” there shall be substituted “ a specified financial penalty ”.
- (2) For subsection (4) of that section (amount of penalty) there shall be substituted—
- “(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).
- (3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
  - (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
- (3C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
  - (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

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(3D) Section 19(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.”

- (3) This paragraph applies only in a case of a revocation in relation to which—
- (a) the notice required by section 18(2) of the 1990 Act, or
  - (b) the notice revoking the licence,
- is served after the commencement of this paragraph.

**Commencement Information**

**I2** Sch. 13 para. 2 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Licences for Channel 3 services and for Channels 4 and 5*

- 3 (1) For subsection (2) of section 41 (penalties for failure by holder of licence for Channel 3 services, Channel 4 or Channel 5 to comply with licence conditions or directions) there shall be substituted—

“(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1)(a) shall not exceed 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”

- (2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

**Commencement Information**

**I3** Sch. 13 para. 3 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Restricted services licences*

- 4 (1) In subsection (2) of section 42B (application of sections 40 to 42 to licensing of restricted services), for “subsections (3) and (4)” there shall be substituted “subsections (3) to (3C)”.

- (2) In subsection (3) of that section—

- (a) for “subsection (2)” there shall be substituted “subsections (1A) to (1C)”; and
- (b) for the words from “shall not exceed whichever is the greater” onwards there shall be substituted “is the maximum penalty given by subsection (3A).”

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(3) For subsection (4) of that section (penalties for failure to comply with conditions or directions) there shall be substituted—

“(3A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).

(3B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(3C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (3A) or (3B) above.”

(4) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

**Commencement Information**

**I4** Sch. 13 para. 4 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Additional television services licences*

5 (1) For subsection (2) of section 55 (penalties for failure by holder of licence for additional television service to comply with licence conditions or directions) there shall be substituted—

“(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 52(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

**Commencement Information**

**I5** Sch. 13 para. 5 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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*Revocation of national sound broadcasting licence*

- 6 (1) In subsection (3) of section 101 (penalty on revocation of national sound broadcasting licence), for “a financial penalty of the prescribed amount” there shall be substituted “a specified financial penalty”.
- (2) For subsection (4) of that section (amount of penalty) there shall be substituted—
- “(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).
- (3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
- (3C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
- (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.
- (3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.”
- (3) This paragraph applies only in a case of a revocation in relation to which—
- (a) the notice required by section 101(2) of the 1990 Act, or
- (b) the notice revoking the licence,
- is served after the commencement of this paragraph.

**Commencement Information**

**I6** Sch. 13 para. 6 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Licences for analogue sound services*

- 7 (1) For subsection (2) of section 110 (penalties for failure by holder of national sound broadcasting licence to comply with licence conditions or directions) there shall be substituted—
- “(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).
- (1B) The maximum penalty is whichever is the greater of—
- (a) £250,000; and

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- (b) 5 per cent. of the qualifying revenue for his last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above.”
- (2) In subsection (3) of that section (maximum penalty for failure by holder of a sound broadcasting licence that is not a national licence to comply with licence conditions or directions), for “£50,000” there shall be substituted “ £250,000 ”.
- (3) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

**Commencement Information**

**I7** Sch. 13 para. 7 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Additional radio services licences*

- 8 (1) For subsection (2) of section 120 (penalties for failure by holder of additional radio services licence to comply with licence conditions or directions) there shall be substituted—
- “(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1C) Section 118(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”
- (2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

**Commencement Information**

**I8** Sch. 13 para. 8 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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*Power to amend penalties under the 1990 Act*

- 9 (1) The Secretary of State may by order amend any of the provisions of the 1990 Act specified in sub-paragraph (2) by substituting a different sum for the sum for the time being specified in that provision.
- (2) Those provisions are—
- (a) section 18(3B)(a) and (3C)(a);
  - (b) section 42B(3A)(a);
  - (c) section 101(3B)(a) and (3C)(a);
  - (d) section 110(1B)(a) and (3).
- (3) No order is to be made under this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

**Commencement Information**

**19** Sch. 13 para. 9 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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