
STATUTORY INSTRUMENTS

1997 No. 1682

BROADCASTING

The Satellite Television Service Regulations 1997

Made - - - - 10th July 1997

Coming into force - - 11th July 1997

Whereas the Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ with regard to measures relating to television broadcasting.

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 2(2) of that Act and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

- 1.—(1) These Regulations may be cited as the Satellite Television Service Regulations 1997.
- (2) These Regulations shall come into force on the day after the day on which they are made.

Amendments of Broadcasting Act 1990

2. The Broadcasting Act 1990⁽³⁾ is amended in accordance with the Schedule to these Regulations.

Modification of licence conditions

3. Any licence to provide a non-domestic satellite service (within the meaning of Part I of the Broadcasting Act 1990 as originally enacted) granted before the commencement of these Regulations shall, as from that commencement, for the remainder of the term of the licence—

- (a) be taken to be a licence to provide a satellite television service (within the meaning of that Part), and

(1) S.I. 1997/1174.

(2) 1972 c. 68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm. 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(3) 1990 c. 42; section 2 of that Act was amended by Schedule 10, paragraphs 1 and 12, to the Broadcasting Act 1996 (c. 55) (“the 1996 Act”); section 43 was amended by Schedule 10, paragraph 15, to the 1996 Act; section 45 was amended by section 88 of the 1996 Act; section 45A was inserted by section 89 of the 1996 Act; section 46 was amended by Schedule 10, paragraph 16, to the 1996 Act; section 72 was amended by Schedule 10, paragraphs 4 and 18, to the 1996 Act; Schedule 2, Part II was amended by Schedule 2, Part II, to the 1996 Act; Schedule 2, Part III was substituted by Schedule 2, Part III, to the 1996 Act.

- (b) be taken to include a condition requiring that either—
 - (i) the holder of the licence is established in the United Kingdom, or
 - (ii) the holder of the licence is not established in any EEA State and the service is provided in circumstances falling within section 43(2) of that Act.

Transitional saving for any satellite service becoming licensable on commencement of Regulations

4.—(1) In this Regulation—

“the 1990 Act” means the Broadcasting Act 1990;

“commencement” means the commencement of these Regulations.

(2) Paragraph (3) applies in relation to any service which—

- (a) was provided before commencement,
- (b) immediately before commencement, was not required by Part I of the 1990 Act to be licensed as a domestic satellite service or a non-domestic satellite service, and
- (c) on commencement, is a satellite television service for the purposes of section 43 of the 1990 Act (as amended by these Regulations).

(3) During the period of three months beginning with the day on which these Regulations come into force, section 13 of the 1990 Act (prohibition on providing television services without a licence) shall not apply in relation to any service to which this paragraph applies.

Saving for existing order under section 79(5) of Broadcasting Act 1990

5. Until the commencement of the first order made under subsection (5) of section 79 of the Broadcasting Act 1990 after the commencement of these Regulations—

- (a) the Broadcasting (Foreign Satellite Programmes) (Specified Countries) Order 1994⁽⁴⁾ shall have effect as if made for the purposes of paragraph (b) of that subsection (which relates to radio), and
- (b) the specified countries for the purposes of paragraph (a)(iii) of that subsection (which relates to television) shall be taken to be such of the countries listed in the Schedule to that Order as are not EEA States (within the meaning of the 1990 Act).

Consequential repeal and revocation

6.—(1) Paragraph 15 of Schedule 10 to the Broadcasting Act 1996⁽⁵⁾ is hereby repealed.

(2) The Broadcasting (Prescribed Countries) Order 1996⁽⁶⁾ is hereby revoked.

10th July 1997

Chris Smith
Secretary of State for National Heritage

⁽⁴⁾ S.I. 1994/453.

⁽⁵⁾ 1996 c. 55.

⁽⁶⁾ S.I. 1996/904.

SCHEDULE

Regulation 2

Amendments of Broadcasting Act 1990

1.—(1) Section 2 (regulation by Commission of provision of television services) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after “television programme services” there is inserted “(other than satellite television services)”, and

(b) after paragraph (a) there is inserted—

“(aa) satellite television services (as defined by section 43(1)) provided by persons other than the BBC and the Welsh Authority,”.

(3) In subsection (4), in the definition of “television programme service”, for paragraph (b) there is substituted—

“(b) a satellite television service (as defined by section 43(1));”.

(4) In subsection (5)—

(a) the words “including a domestic satellite service (as defined by section 43(1))” are omitted, and

(b) after “but not including a restricted service (as defined by section 42A)” there is inserted “, a satellite television service (as defined by section 43(1)),”.

2. In section 13 (prohibition on providing television services without a licence), in subsection (1), after “section 2(1)(a)” there is inserted “, (aa)”.

3. For section 43 (domestic and non-domestic satellite services) there is substituted—

“43 Satellite television services.

(1) In this Part “satellite television service” means a service which consists in the transmission for general reception of television programmes by satellite and which—

(a) is provided by a person who is established in the United Kingdom, or

(b) is provided, in circumstances falling within subsection (2), by a person who is not established in any EEA State.

(2) A service is provided in circumstances falling within this subsection if—

(a) it is provided by means of—

(i) an allocated frequency, or

(ii) satellite capacity granted by the United Kingdom, or

(b) it is transmitted from a place in the United Kingdom.

(3) For the purposes of this Act a service consisting in the transmission of television programmes by satellite shall, subject to subsection (4), be regarded as provided by the person who is in a position to determine what is to be included in the service.

(4) For the purposes of this Act any satellite television service which is composed by, and transmitted for, a BBC company, a Channel 4 company or an S4C company shall be regarded as provided by that company and not by the relevant broadcasting body (even if the relevant broadcasting body is in a position to determine what is to be included in the service).

(5) In this section—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“allocated frequency” means a frequency allocated to the United Kingdom for broadcasting by satellite;

“relevant broadcasting body” means—

- (a) in relation to a BBC company, the BBC,
- (b) in relation to a Channel 4 company, the Channel Four Television Corporation, and
- (c) in relation to an S4C company, the Welsh Authority.”

4. Section 44 (licensing etc. of domestic satellite services) is hereby repealed.

5.—(1) Section 45 (licensing etc. of non-domestic satellite services) is amended as follows.

(2) For “non-domestic satellite” in the sidenote and in subsections (1), (4) and (6) there is substituted “satellite television”.

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

“(3) Without prejudice to the generality of section 3(2), a licence to provide a satellite television service may authorise the provision of a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies.”

6. In section 45A (power of Commission to suspend licence to provide non-domestic satellite service), in the sidenote and in subsection (1)(a) for “non-domestic satellite” there is substituted “satellite television”.

7.—(1) Section 46 (licensable programme services) is amended as follows.

(2) In subsection (2)(a), for “or a non-domestic satellite service” there is substituted “, a satellite television service or an EEA satellite service”.

(3) After subsection (5) there is inserted—

“(6) In this section “EEA satellite service” means any service which—

- (a) consists in the transmission of television programmes by satellite, and
- (b) is provided by a person established in an EEA State other than the United Kingdom.”

8. In section 53 (duration of additional services licences, and renewal of licences for provision of such services on assigned frequencies), subsection (3) is hereby repealed.

9. In section 66A (enforcement of licences held by BBC companies), in subsection (2)—

- (a) paragraph (b) is omitted, and
- (b) in paragraph (c), for “non-domestic satellite” there is substituted “satellite television”.

10. In section 71 (interpretation of Part I), in subsection (1)—

- (a) the definitions of “domestic satellite service” and “non-domestic satellite service” are omitted, and
- (b) after the definition of “S4C” there is inserted—

““satellite television service” has the meaning given by section 43(1);”.

11. In section 72 (local delivery services), in subsection (2)(b) for “non-domestic satellite service” there is substituted “satellite television service”.

12. In section 79 (regulation of delivery of programmes provided by licence holder and foreign satellite programmes) for subsection (5) there is substituted—

“(5) In subsection (2) “foreign satellite programme” means—

- (a) a television programme transmitted by satellite otherwise than as part of—
 - (i) a satellite television service (within the meaning of Part I),
 - (ii) a service provided by a person established in an EEA State other than the United Kingdom, or
 - (iii) a service not falling within sub-paragraph (i) or (ii) and transmitted from within any country or territory specified in an order made by the Secretary of State for the purposes of this sub-paragraph, or
- (b) a sound programme transmitted by satellite from a place outside the United Kingdom, other than a programme so transmitted from within any country specified in an order made by the Secretary of State for the purposes of this paragraph.”

13. In section 177 (orders proscribing unacceptable foreign satellite services), for subsection (6) there is substituted—

“(6) In this section and section 178—

“foreign satellite service” means—

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

“relevant foreign satellite service” means—

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

14.—(1) Section 202 (general interpretation) is amended as follows.

(2) In subsection (1), after the definition of “dwelling-house” there is inserted—

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

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

(3) After subsection (5) there is inserted—

“(5A) For the purposes of this Act a person is not to be regarded at any time as being established both in the United Kingdom and in another EEA State.”

15. In Part II of Schedule 2 (restrictions on the holding of licences), in paragraphs 1(2)(b) and 2(2)(a)(i), for “non-domestic satellite” there is substituted “satellite television”.

16.—(1) Part III of Schedule 2 (restrictions to prevent accumulations of interests in licensed services) is amended as follows.

(2) In paragraph 1—

- (a) in sub-paragraph (1) for “seventeen” there is substituted “sixteen”, and
- (b) in sub-paragraph (2) for paragraphs (c) and (d) there is substituted—
 - “(d) satellite television services.”

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) In paragraph 2 (general limit on holding of licences to provide television services or interests in bodies corporate holding such licences)—

- (a) in sub-paragraphs (1)(a) and (2)(a) and (b), for “1(2)(a), (c), (d), (e) or (h)” there is substituted “1(2)(a), (d), (e) or (h)”, and
- (b) in sub-paragraph (3) for “non-domestic satellite” there is substituted “satellite television”.

(4) In paragraph 16 (power to impose additional limits in relation to licences to provide television or radio services)—

- (a) in sub-paragraph (1), for “1(2)(b), (c), (d) or (f)” there is substituted “paragraph 1(2)(b), (d) or (f)”,
- (b) in sub-paragraph (4)—
 - (i) paragraph (a) is omitted,
 - (ii) in paragraph (b) for “non-domestic satellite” there is substituted “satellite television”,
 - (iii) the words “44(2)” are omitted, and
 - (iv) for “domestic satellite services, non-domestic satellite services” there is substituted “satellite television services”, and
- (c) in sub-paragraph (6), for “(4)(a), (b) or (c)” there is substituted “(4)(b) or (c)”.

17. In Part III of Schedule 12 (provisions relating to licences in force under or by virtue of that Schedule), in paragraph 3—

- (a) in sub-paragraph (6)(c) the words “a domestic satellite service” are omitted, and
- (b) in sub-paragraph (8)(d) for “to Channel 4 or 5 or to a domestic satellite service” there is substituted “or to Channel 4 or 5”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations under section 2(2) of the European Communities Act 1972 give effect in the United Kingdom to Article 2(1) and (2) and Article 3(2) of Council Directive [89/552/EEC](#) of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (“the Broadcasting Directive”). The European Court of Justice found, in a judgment dated 10 September 1996, that the United Kingdom had failed to fulfil its obligations under those Articles by misinterpreting the basis on which satellite broadcasters fell within UK jurisdiction, by applying different regimes to domestic satellite services and non-domestic satellite services and by exercising control over broadcasts transmitted by broadcasters falling within the jurisdiction of other Member States.

Paragraph 3 of the Schedule replaces section 43 of the Broadcasting Act 1990 (“the 1990 Act”) (domestic and non-domestic satellite services) with a new section so as to remove the distinction between the two types of satellite service and create a new service known as a satellite television service. The provider of such a service (defined in the substituted section 43(3) as the person who is in a position to determine what is to be included in the service) will be licensable by the Independent

Television Commission (“the ITC”) if he is either established in the UK or, not being established anywhere in the EEA, he makes use of a UK frequency or UK satellite capacity or an uplink situated in the UK.

Paragraph 4 of the Schedule effects the consequential abolition of domestic satellite services while paragraph 5 renames non-domestic satellite services as satellite television services.

Paragraphs 7, 12 and 13 of the Schedule prevent the double licensing by the ITC of programme services provided by persons established in the EEA.

Paragraph 15 of the Schedule provides that satellite television service licences may be held by non-EEA nationals and religious bodies.

The other amendments of the 1990 Act made by the Schedule are minor and consequential.

Regulation 3 provides that satellite licences granted before the commencement of the Regulations shall be varied to take account of the new jurisdiction test.

Regulation 4 provides that persons who will require a satellite licence as a result of the coming into force of the Regulations will not be committing an offence under section 13 of the 1990 Act by providing a service without a licence for the first three months after the commencement of the Regulations.

Regulation 5 modifies the effect of the existing order under section 79 of the 1990 Act to reflect the amendment of that section made by paragraph 12 of the Schedule to the Regulations.