Draft Order laid before Parliament under section 1(6) of the Broadcasting Act 1996 and section 234(3) of the Communications Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

COMMUNICATIONS

The Television Licensable Content Services Order 2006

Made - - - -

Coming into force - -

This Order is made by the Secretary of State in exercise of powers conferred by section 1(5) of the Broadcasting Act 1996(**1**) and sections 234 and 402(3) of the Communications Act 2003(**2**).

To the extent that this Order is made under section 1(5) of the Broadcasting Act 1996, the Secretary of State considers it appropriate to make it, having regard to developments in broadcasting technology.

To the extent that this Order is made under sections 234 and 402(3) of the Communications Act 2003, the Secretary of State considers it appropriate to make it, having regard to those developments and other developments in technology that have taken place.

In accordance with section 1(6) of the Broadcasting Act 1996 and section 234(3) of the Communications Act 2003, a draft of this Order has been approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State now makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Television Licensable Content Services Order 2006 and shall come into force on the day after the day on which it is made.

(2) This Order does not extend to the Isle of Man.(**3**)

(**1**) 1996 c.55. Section 1 was amended by paragraph 74 of Part 2 of Schedule 15 to the Communications Act 2003, and repealed in part by Schedule 19 to that Act.

(**2**) 2003 c.21.

(**3**) Section 1(5) of the Broadcasting Act 1996 extends to the Isle of Man by virtue of article 2(a) of SI 2003/3193. Section 1(4) of that Act has effect as if any order made under section 1(5) which is for the time being in force in the United Kingdom had extended to the Bailiwick of Jersey and the Bailiwick of Guernsey: see paragraph 2 of Schedule 1 to SI 2003/3203 and paragraph 2 of Schedule 1 to SI 2003/3192, respectively. Sections 234 and 402(3) of the Communications Act 2003 extend to the Bailiwick of Jersey by virtue of article 6 of SI 2003/3197 and to the Bailiwick of Guernsey by virtue of article 6 of SI 2003/3195.

Modification of the meaning of "television licensable content services"

2.—(1) In section 232 of the Communications Act 2003 (meaning of "television licensable content service"), in subsection (1)—

(a) for "both" substitute "more";

(b) omit "or" at the end of paragraph (a); and

(c) after that paragraph insert—

"(aa) the broadcasting of the service (whether by that person or by another) by means of a radio multiplex service; or".

(2) In section 233 of that Act (services that are not television licensable content services)—

(a) in subsection (1), for "multiplex service" substitute "television multiplex service or a general multiplex service"; and

(b) in subsection (9), omit the definition of a "multiplex service".

Supplemental provision: licensing of television licensable content services

3. In section 235 of the Communications Act 2003 (licensing of television licensable content services), after subsection (6) insert—

"(7) A licence to provide a television licensable content service must contain such conditions as OFCOM consider appropriate for requiring the licence holder—

(a) on entering into any agreement with the provider of a radio multiplex service for the provision of a television licensable content service to be broadcast by means of that multiplex service, to notify OFCOM—

(i) of the identity of the radio multiplex service;

(ii) of the period during which the service will be provided; and

(iii) where under the agreement he will be entitled to the use of a specified amount of digital capacity, of that amount;

(b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify OFCOM of the variation so far as relating to those matters; and

(c) where he is providing a television licensable content service to the provider of a radio multiplex service in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify OFCOM of that fact.".

Amendment of the definition of "digital programme service"

4. In section 1(4) of the Broadcasting Act 1996 (definition of a "digital programme service"), before paragraph (a) insert—

"(za) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service,".

Amendment of the Broadcasting Act 1996

5.—(1) The Broadcasting Act 1996 is amended as follows.

(2) In section 39(**4**) (interpretation of Part 1), in subsection (1), after the definition of "technical service" (but before the definition of "television multiplex service"), insert—

(**4**) Section 39 was amended by paragraph 100 of Part 2 of Schedule 15 to the Communications Act 2003, and repealed in part by Schedule 19 to that Act.

""television licensable content service" has the meaning given by section 232 of the Communications Act 2003;".

(3) In section 46(**5**) (national radio multiplex licences), in subsection (4), after paragraph (d) insert—

"(da) the applicant's proposals as to the broadcasting of television licensable content services,".

(4) In section 47(**6**) (award of national radio multiplex licences), in subsection (2)(f), after "programme services" insert ", television licensable content services".

(5) In section 49(**7**) (reservation of capacity for BBC services), in subsection (9)(b), after "providing" in the second place where it occurs insert "television licensable content services or".

(6) In section 50(**8**) (local radio multiplex licences), in subsection (4), after paragraph (d) insert—

"(da) the applicant's proposals as to the broadcasting of television licensable content services,".

(7) In section 51(**9**) (award of local radio multiplex licences), in subsection (2)(g), after "programme services" insert ", television licensable content services".

(8) In section 54(**10**) (conditions attached to national or local radio multiplex licences), in subsection (1)—

(a) after paragraph (c) insert—

"(ca) that all television licensable content services broadcast under the licence are provided by the holder of a licence under Part 1 of the 1990 Act to provide such a service or by an EEA broadcaster (within the meaning given by section 12(3A));";

(b) in paragraph (e), after "programme services" insert ", television licensable content services"; and

(c) in paragraph (f), after "programme service" insert ", television licensable content service".

(9) In section 56(**11**) (multiplex revenue), after subsection (9), insert—

"(10) This section and section 57 shall have effect as if references in this section to digital sound programme services included references to television licensable content services.".

(10) In section 63(**12**) (digital additional services)—

(a) in subsection (1)(b), for "an ancillary service" substitute "a television licensable content service, an ancillary service, a relevant ancillary service within the meaning of section 232 of the Communications Act 2003";

(b) in subsection (2), after ""ancillary service"" insert "(except in the expression "relevant ancillary service")"; and

(c) in subsection (3)(a), after "programme services" insert ", television licensable content services".

(**5**) Section 46 was amended by paragraph 105 of Part 2 of Schedule 15 to the Communications Act 2003, and repealed in part by Schedule 19 to that Act.
(**6**) Section 47 was amended by paragraph 106 of Part 2 of Schedule 15 to the Communications Act 2003, and repealed in part by Schedule 19 to that Act.
(**7**) Section 49 was amended by paragraph 108 of Part 2 of Schedule 15 to the Communications Act 2003.
(**8**) Section 50 was amended by paragraph 109 of Part 2 of Schedule 15 to the Communications Act 2003.
(**9**) Section 51 was amended by paragraph 110 of Part 2 of Schedule 15 to the Communications Act 2003.
(**10**) Section 54 was amended by sections 259 and 315 of the Communications Act 2003, and by paragraph 113 of Part 2 of Schedule 15 to that Act, and repealed in part by Schedule 19 to that Act.
(**11**) Section 56 was amended by paragraph 115 of Part 2 of Schedule 15 to the Communications Act 2003, and repealed in part by Schedule 19 to that Act.
(**12**) Section 63 was amended by section 260(2) and (3) of the Communications Act 2003.

(11) In section 72(**13**) (interpretation of Part 2), in subsection (1), after the definition of "technical service" (and before the definition of "television multiplex service") insert—

""television licensable content service" has the meaning given by section 232 of the Communications Act 2003;".

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(**13**) Section 72 was amended by section 260(4) of the Communications Act 2003, and by paragraph 126 of Part 2 of Schedule 15 to that Act, and repealed in part by Schedule 19 to that Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the definition of a "television licensable content service" in the Communications Act 2003 (c. 21) so that television programme services falling within that definition can be carried on a radio multiplex service. It also makes other amendments to that Act and the Broadcasting Act 1996 (c.55).

A radio multiplex service (which is defined in Part 3 of the Communications Act 2003) is a service by which digital radio and other services are broadcast by terrestrial (i.e. non-satellite) wireless telegraphy. Recent advances in broadcasting and other technologies (e.g. in screens and batteries for mobile receiving devices) have made it possible for radio multiplex services also to carry television programme services. However, without this Order, there would still be legal obstacles to that. In particular, the multiplex would be reclassified as a television multiplex: see sections 241(2)(a) and 258(1)(c) of the Communications Act 2003, which say that a multiplex service carrying at least one of the television services listed in section 241(9) (which do *not* include a television licensable content service) is a television multiplex service and cannot be a radio multiplex service.

A television licensable content service is a service of television programmes or electronic programme guides (or both) provided with a view to its being made available for reception by members of the public by means of satellite broadcasting or the use of some other electronic communications network, but not by means of a multiplex service: see sections 232 and 233(1) of the Communications Act 2003. Article 2 amends sections 232 and 233 to allow a television licensable content service to be carried on a radio multiplex service. Article 3 makes supplemental provision about the licensing of such services.

Articles 4 and 5 make consequential amendments to the Broadcasting Act 1996. In particular, they ensure that television licensable content services on the one hand, and digital programme services and digital additional services on the other, are defined in a manner that is mutually exclusive (articles 4 and 5(10)); make provision in relation to television licensable content services in the advertising, award and issuing by OFCOM of licences to provide radio multiplex services (article 5(3) to (8)); and make provision (article 5(9)) to take account of television licensable content services in the calculation of multiplex revenue under section 56 of the Broadcasting Act 1996, which is important for certain regulatory purposes (e.g. if a radio multiplex service operator incurs a financial penalty imposed by OFCOM).

A Regulatory Impact Assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House of Parliament. Copies are available from Stuart Brand at the Department for Culture, Media and Sport, 2 to 4 Cockspur Street, London SW1Y 5DH. (Tel: 0207 211 6416 or e-mail: stuart.brand@culture.gsi.gov.uk).