



# Broadcasting Act 1981

## 1981 CHAPTER 68

### PART I

#### THE INDEPENDENT BROADCASTING AUTHORITY

##### *Rental payments*

#### **32 Rental payments by programme contractors.**

- (1) The contracts between the Authority and the various programme contractors for the provision of television programmes shall provide for payments to be made by the programme contractors to the Authority under two heads, namely—
  - (a) payments representing what appear to the Authority, in relation to the branch of their undertaking consisting of the provision of television broadcasting services, to be the appropriate contributions of the respective programme contractors towards meeting the sums which the Authority regard as necessary in order to discharge their duty under section 36(2) in relation to that branch of their undertaking; and
  - (b) additional payments of amounts [<sup>F1</sup>in respect of profits and in respect of advertising revenue] determined in accordance with this section.
- (2) The contracts between the Authority and the various programme contractors for the provision of local sound broadcasts shall provide for payments to be made by the programme contractors to the Authority under two heads corresponding to those under subsection (1), namely—
  - (a) payments representing what appear to the Authority, in relation to the branch of their undertaking consisting of the provision of local sound broadcasting services, to be the appropriate contributions of the respective programme contractors towards meeting the sums which the Authority regard as necessary in order to discharge their duty under section 36(2) in relation to that branch of their undertaking; and
  - (b) additional payments of amounts [<sup>F2</sup>in respect of profits] determined in accordance with this section.

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- (3) The payments mentioned in subsections (1)(b) and (2)(b) (referred to in this and the following sections of this Act as “additional payments”) shall not form part of the revenue of the Authority and, when received by the Authority, shall be paid into the Consolidated Fund of the United Kingdom or the Consolidated Fund of Northern Ireland as provided by section 33(3).
- (4) If the accounting period of a programme contractor is a period of 12 months, the amount of the additional payments to be made by him shall be that provided in the following [<sup>F3</sup>Tables].

[<sup>F3</sup>Table A

RATES OF ADDITIONAL PAYMENTS IN  
RESPECT OF ADVERTISING REVENUE

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	<i>Rate for determining amount of additional payments</i>
For so much of the advertising revenue for the accounting period as does not exceed the free slice for advertising revenue.	Nil
For so much of the advertising revenue for the accounting period as exceeds the free slice for advertising revenue.	The relevant revenue rate except where the rate is nil

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For the purposes of this Table—

- (a) a nil rate, instead of the relevant revenue rate, is applicable in the case of persons who are DBS programme contractors or DBS teletext contractors;
- (b) the relevant revenue rate is [<sup>F4</sup>2.5 per cent]; and
- (c) the free slice for advertising revenue is [<sup>F5</sup>£25 million] or, in the case of a TV programme contractor, that amount with the addition of the payments payable by him in pursuance of section 13(2).

Table B

RATES OF ADDITIONAL PAYMENTS IN RESPECT OF PROFITS

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	<i>Rate for determining amount of additional payments</i>
For so much of the profits for the accounting period after deducting any amount payable under Table A as does not exceed the free slice for profits.	Nil
For so much of the profits for the accounting period after deducting any amount payable under Table A as exceeds the free slice for profits.	The relevant profits rate except where the rate is nil.

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For the purposes of this Table—

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- (a) a nil rate, instead of the relevant profits rate, is applicable in the case of—
  - (i) programme contractors who provide local sound broadcasts, and
  - (ii) DBS programme contractors or DBS teletext contractors;
- (b) the relevant profits rate is 25 per cent; and
- (c) the free slice for profits £2 million.]

[(4A) . . . . .<sup>F6</sup>]

- (5) If the accounting period is more or less than 12 months, for the [<sup>F7</sup>relevant sum mentioned in the Tables above] there shall be substituted that sum multiplied by

$$\frac{X}{52}$$

where X is the number of weeks in the accounting period, counting an odd 4 days or more as a week.

- (6) In the case of a [<sup>F8</sup>TV or DBS programme contractor] who is also a teletext contractor, his profits for any accounting period shall be computed for the purposes of this section as if the teletext transmissions provided by him were television programmes provided by him in his capacity as a [<sup>F8</sup>TV or DBS programme contractor]
- (7) Where an order under section 35 applies to the accounting period of the programme contractor, the amount of the additional payments [<sup>F9</sup>in respect of profits] to be made by him by virtue of subsection (1)(b) or (2)(b) (as the case may be) for that accounting period shall be—
  - (a) that prescribed by the preceding provisions of this section, or
  - (b) the amount prescribed by the order,whichever is the greater.
- (8) The Secretary of State may with the approval of the Treasury, and after consultation with the Authority, by order amend [<sup>F10</sup>any of the provisions of subsections (4)] and (5) of this section so as to increase or reduce any rate, or the number of different rates, or the amount to which any rate applies; and the references in this subsection to a rate include the case where the rate is nil.

Any order under this subsection shall be made by statutory instrument; but no such order shall be made unless a draft of it has been laid before Parliament and approved by resolution of each House.

An order under this subsection shall have effect as respects all additional payments for any accounting period beginning on or after the date on which the order comes into force, whether the contracts under which the additional payments are due were executed before or after the making of the order.

- [<sup>F11</sup>(9) The power of the Secretary of State under subsection (8) shall include power to amend the provisions in question as there mentioned—
  - (a) only in their application in relation to the additional payments mentioned in subsection (1)(b); or
  - (b) only in their application in relation to the additional payments mentioned in subsection (2)(b); or

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- (c) differently in their application as mentioned in paragraphs (a) and (b) respectively; or
  - (d) only in their application in relation to additional payments in respect of advertising revenue; or
  - (e) only in their application in relation to additional payments in respect of profits; or
  - (f) differently in their application as mentioned in paragraphs (d) and (e) respectively.
- (9A) In the application of the provisions mentioned in subsection (8) in relation to the additional payments mentioned in subsection (1)(b), the power of the Secretary of State under subsection (8) shall also include power to amend those provisions as mentioned in subsection (8)—
- (a) only in relation to persons who are TV programme contractors (including persons who are both TV programme contractors and teletext contractors); or
  - (b) only in relation to persons who are DBS programme contractors (including persons who are both DBS programme contractors and teletext contractors); or
  - (c) only in relation to persons who are teletext contractors (other than DBS teletext contractors) but are not TV or DBS programme contractors; or
  - (d) only in relation to persons who are DBS teletext contractors but are not TV or DBS programme contractors; or
  - (e) differently in relation to persons within paragraphs (a), (b), (c) and (d) respectively.]
- (10) Schedule 4 shall have effect for supplementing this section, and in that Schedule this section, together with sections 33 to 35, are referred to as “the principal sections”.

#### Annotations:

#### Subordinate Legislation Made

- P1** S. 32: power previously exercised by S.I. 1982/1522 and 1986/629.  
**P2** S. 32(8)(9)(d): s. 32(8) (with s. 32(9)(d)) power exercised (18.12 1991) by S.I. 1991/2868.

#### Amendments (Textual)

- F1** Words inserted by Finance Act 1989 (c. 26, SIF 96), s. 181(1), Sch. 16 Pt. I para. 1(2)  
**F2** Words inserted by Finance Act 1989 (c. 26, SIF 96), s. 181(1), Sch. 16 Pt. I para. 1(3)  
**F3** Word “Tables” and Tables A and B substituted by virtue of Finance Act 1986 (c. 41, SIF 96), s. 111, Sch. 22 Pt. I para. 1(2) and Finance Act 1989 (c. 26, SIF 96), s. 181(1), Sch. 16 Pt. I para. 1(4)  
**F4** Words in s. 32(4) substituted (1.1.1992) by S.I. 1991/2868, art. 2(a) for the purposes of Table A.  
**F5** Words in s. 32(4) substituted (1.1.1992) by 1991/2868, art. 2(b) for the purposes of Table A.  
**F6** S. 32(4A) inserted by Finance Act 1986 (c. 41, SIF 96), s. 111, Sch. 22 Pt. I para. 1(3) and repealed by Finance Act 1989 (c. 26, SIF 96), ss. 181(1), 187, Sch. 16 Pt. I para. 1(5), Sch. 17 Pt. XI  
**F7** Words substituted by virtue of Finance Act 1986 (c. 41, SIF 96), s. 111, Sch. 22 Pt. I para. 1(4) and Finance Act 1989 (c. 26, SIF 96), s. 181(1), Sch. 16 Pt. I para. 1(6)  
**F8** Words substituted by Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 40(1)  
**F9** Words inserted by Finance Act 1989 (c. 26, SIF 96), s. 181(1), Sch. 16 Pt. I para. 1(7)  
**F10** Words substituted by virtue of Finance Act 1986 (c. 41, SIF 96), s. 111, Sch. 22 Pt. I para. 1(5) and Finance Act 1989 (c. 26, SIF 96), s. 181(1), Sch. 16 Pt. I para. 1(8)  
**F11** S. 32(9)(9A) substituted for s. 32(9) by Finance Act 1989 (c. 26, SIF 96), s. 181(1), Sch. 16 Pt. I para. 1(9)

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

- C1** Ss. 32–35 modified (*temp.* ending with 31.12.1992) by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 129, [Sch. 11 Pt. II paras. 2\(2\)\(c\), 4, 5, 8\(2\)\(3\)](#)
- C2** Power to modify ss. 32–35 conferred by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 129, [Sch. 11 Pt. III para. 2](#)
- C3** Ss. 32–35 modified by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 129, [Sch. 11 Pt. IV para. 2\(3\)\(c\)\(4\)](#)
- C4** [Finance Act 1986 \(c. 41, SIF 96\)](#), s. 111, [Sch. 22 Pt. I](#) and [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), [Sch. 16 Pt. I](#), provide that the Broadcasting Act 1981 shall have effect with respect to additional payments payable by programme contractors as therein mentioned.
- C5** [S. 32\(4\)](#) modified (*temp.* in relation to any time before the making under subsection (8) of section 32 of the 1981 Act of an order amending subsection (4) of that section) by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), [s. 40\(3\)](#)

**33 Provisions supplemental to s. 32.**

- (1) The contracts between the Authority and the various programme contractors shall include such terms as are in the opinion of the Authority necessary or expedient to ensure that, except for deduction of commission by persons acting as advertising agents, the amount of the [<sup>F12</sup>advertising revenue] of a programme contractor is not reduced under arrangements by which any part of the consideration for the insertion of advertisements in programmes provided by the programme contractor is receivable by any person other than the programme contractor (whether that person is under the control of the programme contractor or not).
- (2) Every contract between the Authority and a programme contractor which provides either for the supply of television programmes or for the supply of local sound broadcasts to be broadcast [<sup>F13</sup>for reception in areas or localities]of which some are in Great Britain and some in Northern Ireland shall provide that, as regards his [<sup>F14</sup>advertising revenue]for any period, the programme contractor shall give to the Authority such information as they may require for the purpose of ascertaining the proportions in which [<sup>F14</sup>the revenue derives]from the broadcasting of advertisements [<sup>F13</sup>for reception in areas or localities] in Great Britain and [<sup>F13</sup>areas or localities]in Northern Ireland respectively.
- (3) On receipt of any additional payments the Authority shall deal with them as follows—
  - (a) if they were paid under a contract for the supply of programmes to be broadcast [<sup>F13</sup>for reception in areas or localities] all of which are in Great Britain, the Authority shall pay them into the Consolidated Fund of the United Kingdom;
  - (b) if they were paid under a contract for the supply of programmes to be broadcast [<sup>F13</sup>for reception in areas or localities] all of which are in Northern Ireland, the Authority shall pay them into the Consolidated Fund of Northern Ireland;
  - (c) if they were paid under such a contract as is mentioned in subsection (2), the Authority shall pay them into the Consolidated Funds of the United Kingdom and Northern Ireland respectively in the proportions in which, according to the information supplied by the programme contractor, the [<sup>F15</sup>advertising revenue] for the relevant accounting period [<sup>F16</sup>derives] from the broadcasting of advertisements [<sup>F13</sup>for reception in areas or localities] in Great Britain and [<sup>F13</sup>areas or localities] in Northern Ireland or, if the programme contractor has failed to supply the necessary information, in such proportions as the Authority estimate to be appropriate.

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- (4) The Authority shall prepare in respect of each financial year—
- (a) an account showing the additional payments received under all their contracts with programme contractors for the provision of television programmes and of the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under subsection (3) in respect of those payments, and
  - (b) an account showing the additional payments received under all their contracts with programme contractors for the provision of local sound broadcasts and of the sums paid as mentioned in paragraph (a) in respect of those payments;
- and shall send those accounts to the Comptroller and Auditor General not later than the end of November following the year; and the Comptroller and Auditor General shall examine, certify and report on each of those accounts and lay copies of it, together with his report, before each House of Parliament.

**Annotations:**

**Amendments (Textual)**

- F12** Words substituted by [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), [Sch. 16 Pt. I para. 2\(2\)](#)
- F13** Words substituted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), s. 57(1), [Sch. 5 para. 40\(4\)](#)
- F14** Words substituted by [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), [Sch. 16 Pt. I para. 2\(3\)](#)
- F15** Words substituted by [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), [Sch. 16 Pt. I para. 2\(4\)](#)
- F16** Word substituted by [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), [Sch. 16 Pt. I para. 2\(4\)](#)

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

- C6** [Ss. 32–35](#) modified (*temp.* ending with 31.12.1992) by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 129, [Sch. 11 Pt. II paras. 2\(2\)\(c\), 4, 5, 8\(2\)\(3\)](#)
- C7** Power to modify [ss. 32–35](#) conferred by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 129, [Sch. 11 Pt. III para. 2](#)
- C8** [Ss. 32–35](#) modified by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 129, [Sch. 11 Pt. IV para. 2\(3\)\(c\)\(4\)](#)
- C9** [Finance Act 1986 \(c. 41, SIF 96\)](#), s. 111, [Sch. 22 Pt. I](#) and [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), [Sch. 16 Pt. I](#), provide that the [Broadcasting Act 1981](#) shall have effect with respect to additional payments payable by programme contractors as therein mentioned.

**34 Instalments payable on account by programme contractors in respect of additional payments.**

- (1) It shall be the duty of the Authority in framing the contracts with the various programme contractors to include terms enabling the Authority to estimate before the beginning of an accounting period the additional payments due for that accounting period, and requiring the programme contractor to pay the estimated amount by monthly instalments throughout the accounting period.
- (2) The Authority shall in particular include terms—
  - (a) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the programme contractor to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment . . . <sup>F17</sup>;
  - (c) ensuring that any amount due under the contract is paid promptly and in full.

<sup>F18</sup>(3) Where any amount falls to be paid to a programme contractor to adjust any overpayment made by him, that amount shall be paid to him—

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- (a) if the contract is for the supply of programmes to be broadcast for reception in areas or localities all of which are in Great Britain, out of the Consolidated Fund of the United Kingdom;
  - (b) if the contract is for the supply of programmes to be broadcast for reception in areas or localities all of which are in Northern Ireland, out of the Consolidated Fund of Northern Ireland; and
  - (c) if the contract is one which falls within subsection (2) of section 33, out of each of those Funds, apportioned in the same way as [<sup>F19</sup>revenue is] apportioned under subsection (3)(c) of that section.]
- (4) Any reference in section 33 to additional payments shall be construed as including any sum payable in pursuance of this section as being an instalment or unpaid balance of any additional payments.
- (5) The accounts to be prepared under paragraphs (a) and (b) of section 33(4) shall show any sums paid in pursuance of subsection (3) of this section in respect of the financial year in question and relating to the additional payments mentioned in those paragraphs respectively.

**Annotations:**

**Amendments (Textual)**

- F17** Words repealed by Finance Act 1986 (c. 41, SIF 96), ss. 111, 114, Sch. 22 Pt. I para. 2(2), **Sch. 23 Pt. XI**
- F18** S. 34(3) substituted by Finance Act 1986 (c. 41, SIF 96), s. 111, **Sch. 22 Pt. I para. 2(3)**
- F19** Words substituted by Finance Act 1989 (c. 26, SIF 96), s. 181(1), **Sch. 16 Pt. I para. 3(2)**

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

- C10** Ss. 32–35 modified (*temp.* ending with 31.12.1992) by Broadcasting Act 1990 (c. 42, SIF 96), s. 129, Sch. 11 Pt. II paras. 2(2)(c), 4, 5, **8(2)(3)**
- C11** Power to modify ss. 32–35 conferred by Broadcasting Act 1990 (c. 42, SIF 96), s. 129, **Sch. 11 Pt. III para. 2**
- C12** Ss. 32–35 modified by Broadcasting Act 1990 (c. 42, SIF 96), s. 129, **Sch. 11 Pt. IV para. 2(3)(c)(4)**
- C13** Finance Act 1986 (c. 41, SIF 96), s. 111, **Sch. 22 Pt. I** and Finance Act 1989 (c. 26, SIF 96), s. 181(1), **Sch. 16 Pt. I**, provide that the Broadcasting Act 1981 shall have effect with respect to additional payments payable by programme contractors as therein mentioned.

**35 Provision for supplementing additional payments.**

- (1) Where the Secretary of State is advised by the Authority, or after consultation with the Authority is of the opinion, that (apart from the provisions of this section)—
- (a) the aggregate amount of the additional payments [<sup>F20</sup>in respect of profits] to be made for an accounting period of a programme contractor in accordance with section 32 by virtue of subsection (1)(b) or (as the case may be) (2)(b) of that section is [<sup>F21</sup>or is] likely to be deficient, and
  - [<sup>F22</sup>(b) the deficiency is, or would be, wholly or mainly attributable to either or both of the following—
    - (i) excessive expenditure forming part of the expenditure by reference to which those additional payments fall to be calculated;
    - (ii) . . . . . <sup>F23</sup>the receipt of consideration for the provision of any programme which is less than that which the

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contractor would have received had the transaction in question been in all respects at arm's length.]

the Secretary of State, with the consent of the Treasury, may make an order prescribing the minimum amount of additional payments to be made by the programme contractor for that accounting period [<sup>F24</sup>in respect of profits of his for that period].

- (2) In determining, for the purposes of subsection (1) of this section, whether in the case of a programme contractor any particular expenditure is excessive, the Authority or the Secretary of State, as the case may be, shall have regard to such considerations as they or he may consider relevant in the circumstances, and in particular to—
- (a) the scale (if any) on which any comparable expenditure has formed part of the . . . <sup>F25</sup> expenditure by reference to which the additional payments of that programme contractor for any previous accounting period have fallen to be calculated, and
  - (b) the scale (if any) on which any comparable expenditure has formed or is expected to form part of the . . . <sup>F25</sup> expenditure by reference to which the additional payments of any other programme contractor for the provision of television programmes or (as the case may be) local sound broadcasts for any current accounting period of his have fallen or are expected to fall to be calculated.

For the purposes of paragraph (b) of this subsection, an accounting period of another programme contractor shall be treated as current if the whole or a part of it is comprised in the accounting period referred to in subsection (1) of this section.

- [<sup>F26</sup>(2A) In determining, for the purposes of subsection (1) of this section, whether in the case of a programme contractor any consideration received by him for the provision of any programme is less than that which the contractor would have received had the transaction in question been in all respects at arm's length, the Authority or the Secretary of State, as the case may be, shall have regard to such matters as they or he may consider relevant, and in particular to any available information as to—
- (a) the consideration received for the provision by the contractor of the programme in other comparable markets;
  - (b) the consideration received by that or any other programme contractor for the provision of other comparable programmes in the same market.]
- (3) Any order made under subsection (1) of this section in respect of an accounting period may, by a further order made by the Secretary of State after consultation with the Authority, and with the consent of the Treasury—
- (a) be revoked, or
  - (b) be varied by substituting a greater or lesser amount for the amount specified in the order (whether as originally made or as previously varied under this subsection).
- (4) No order shall be made under this section after the end of the accounting period to which it relates, [<sup>F27</sup>the period of six months beginning with the date on which the programme contractor furnishes to the Authority, in accordance with the terms of his contract as a programme contractor, a copy of his audited accounts for the accounting period to which the order relates].
- (5) In making their contracts with the various programme contractors, it shall be the duty of the Authority to require those contracts to include such provisions as in the opinion of the Authority will ensure that the Authority will be in a position to comply with any order made under this section.



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- (6) Any order under this section shall be made by statutory instrument; but no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (7) An order under this section shall, notwithstanding that it makes different provision in relation to one programme contractor from the provision made by any order under this section in relation to any other programme contractor, proceed in Parliament as if its provisions would, apart from this section, require to be enacted by a public Bill which cannot be committed to a Select or other Committee of either House under the Standing Orders of either House relating to Private Bills.

#### Annotations:

##### Amendments (Textual)

- F20** Words inserted by [Finance Act 1989](#) (c. 26, SIF 96), s. 181(1), [Sch. 16 Pt. I para. 4\(2\)\(a\)](#)
- F21** Words inserted by [Finance Act 1986](#) (c. 41, SIF 96), s. 111, [Sch. 22 Pt. I para. 3\(2\)](#)
- F22** [S. 35\(1\)\(b\)](#) substituted by [Finance Act 1986](#) (c. 41, SIF 96), s. 111, [Sch. 22 Pt. I para. 3\(3\)](#)
- F23** Words repealed by [Finance Act 1989](#) (c. 26, SIF 96), s. 181(1), [Sch. 16 Pt. I para. 4\(2\)\(b\)](#)
- F24** Words added by [Finance Act 1989](#) (c. 26, SIF 96), s. 181(1), [Sch. 16 Pt. I para. 4\(2\)\(c\)](#)
- F25** Word repealed by [Finance Act 1986](#) (c. 41, SIF 96), s. 114, [Sch. 23 Pt. XI](#)
- F26** [S. 35\(2A\)](#) inserted by [Finance Act 1986](#) (c. 41, SIF 96), s. 111, [Sch. 22 Pt. I para. 3\(5\)](#)
- F27** Words substituted by [Finance Act 1986](#) (c. 41, SIF 96), s. 111, [Sch. 22 Pt. I para. 3\(4\)](#)

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

- C14** [Ss. 32–35](#) modified (*temp.* ending with 31.12.1992) by [Broadcasting Act 1990](#) (c. 42, SIF 96), s. 129, [Sch. 11 Pt. II paras. 2\(2\)\(c\), 4, 5, 8\(2\)\(3\)](#)
- C15** Power to modify [ss. 32–35](#) conferred by [Broadcasting Act 1990](#) (c. 42, SIF 96), s. 129, [Sch. 11 Pt. III para. 2](#)
- C16** [Ss. 32–35](#) modified by [Broadcasting Act 1990](#) (c. 42, SIF 96), s. 129, [Sch. 11 Pt. IV para. 2\(3\)\(c\)\(4\)](#)
- C17** [Finance Act 1986](#) (c. 41, SIF 96), s. 111, [Sch. 22 Pt. I](#) and [Finance Act 1989](#) (c. 26, SIF 96), s. 181(1), [Sch. 16 Pt. I](#), provide that the [Broadcasting Act 1981](#) shall have effect with respect to additional payments payable by programme contractors as therein mentioned.

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