



Broadcasting Act 1981

1981 CHAPTER 68

PART I

THE INDEPENDENT BROADCASTING AUTHORITY

Rental payments

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 [^{F1}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 [^{F2}or is] likely to be deficient, and

[^{F3}(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) [^{F4}the receipt of consideration for the provision of any programme which is less than that which the 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 [^{F5}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 . . . [^{F6}expenditure by reference to which the additional payments of that

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for the Broadcasting Act 1981, Section 35. (See end of Document for details)*

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 . . . ^{F6} 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.

[^{F7}(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, [^{F8}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.

(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.

*Changes to legislation: There are currently no known outstanding effects
for the Broadcasting Act 1981, Section 35. (See end of Document for details)*

Textual Amendments

- F1** Words inserted by [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), **Sch. 16 Pt. I para. 4(2)(a)**
- F2** Words inserted by [Finance Act 1986 \(c. 41, SIF 96\)](#), s. 111, **Sch. 22 Pt. I para. 3(2)**
- F3** [S. 35\(1\)\(b\)](#) substituted by [Finance Act 1986 \(c. 41, SIF 96\)](#), s. 111, **Sch. 22 Pt. I para. 3(3)**
- F4** Words repealed by [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), **Sch. 16 Pt. I para. 4(2)(b)**
- F5** Words added by [Finance Act 1989 \(c. 26, SIF 96\)](#), s. 181(1), **Sch. 16 Pt. I para. 4(2)(c)**
- F6** Word repealed by [Finance Act 1986 \(c. 41, SIF 96\)](#), s. 114, **Sch. 23 Pt. XI**
- F7** [S. 35\(2A\)](#) inserted by [Finance Act 1986 \(c. 41, SIF 96\)](#), s. 111, **Sch. 22 Pt. I para. 3(5)**
- F8** Words substituted by [Finance Act 1986 \(c. 41, SIF 96\)](#), s. 111, **Sch. 22 Pt. I para. 3(4)**

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.

Changes to legislation:

There are currently no known outstanding effects for the Broadcasting Act 1981, Section 35.