



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

#### CHAPTER I

##### REGULATION BY AUTHORITY OF INDEPENDENT RADIO SERVICES GENERALLY

##### *Establishment of Radio Authority*

#### **83 The Radio Authority**

- (1) There shall be an authority to be called the Radio Authority (in this Part referred to as “the Authority”).
- (2) The Authority shall consist of—
  - (a) a chairman and a deputy chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than four nor more than ten, as he may from time to time determine.
- (3) Schedule 8 to this Act shall have effect with respect to the Authority.

##### *Function of Authority*

#### **84 Regulation by Authority of independent radio services**

- (1) It shall be the function of the Authority to regulate, in accordance with this Part, the provision of the following services, namely—
  - (a) sound broadcasting services to which this section applies and which are provided from places in the United Kingdom;

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- (b) licensable sound programme services (as defined by section 112(1)) which are provided from places in the United Kingdom by persons other than the BBC; and
- (c) additional services (as defined by section 114(1)) which are provided from places in the United Kingdom;

and in this Part “independent radio service” means a service falling within paragraph (a), (b) or (c) above.

(2) This section applies to—

- (a) any sound broadcasting service which is provided, on a frequency or frequencies assigned to the Authority under subsection (4)—
  - (i) for any such minimum area of the United Kingdom as the Authority may determine in accordance with section 98(2) (a “national service”), or
  - (ii) for a particular area or locality in the United Kingdom (a “local service”), or
  - (iii) for a particular establishment or other defined location, or a particular event, in the United Kingdom (a “restricted service”); and
- (b) any sound broadcasting service (other than one provided by the BBC) which consists—
  - (i) in the transmission of sound programmes by satellite from a place in the United Kingdom for general reception there, or
  - (ii) in the transmission of such programmes by satellite from a place outside the United Kingdom for general reception there, if and to the extent that the programmes included in the service consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him),

and any such service is referred to in this Part as a “satellite service”.

(3) For the purposes of this Part satellite services shall be regarded as provided by the following persons—

- (a) a service falling within subsection (2)(b)(i)—
  - (i) shall, if and to the extent that the programmes included in it consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him), be regarded as provided by that person (whether the programmes are transmitted by him or not), but
  - (ii) shall otherwise be regarded as provided by the person by whom the programmes are transmitted; and
- (b) a service falling within subsection (2)(b)(ii) shall be regarded as provided by the person by whom the programme material in question is provided as mentioned in that provision.

(4) For the purposes of this Part the Secretary of State may by notice assign to the Authority such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more independent radio services.

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- (5) Any frequency assigned by the Secretary of State under subsection (4) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (6) The Secretary of State may by notice revoke the assignment under subsection (4) of any frequency specified in the notice, and may do so whether or not that frequency is for the time being one on which an independent radio service is being provided.

## **85 Licensing functions of Authority**

- (1) Subject to subsection (2), the Authority may, in accordance with the following provisions of this Part, grant such licences to provide independent radio services as they may determine.
- (2) The Authority shall do all that they can to secure the provision within the United Kingdom of—
  - (a) a diversity of national services each catering for tastes and interests different from those catered for by the others and of which—
    - (i) one is a service the greater part of which consists in the broadcasting of spoken material, and
    - (ii) another is a service which consists, wholly or mainly, in the broadcasting of music which, in the opinion of the Authority, is not pop music; and
  - (b) a range and diversity of local services.
- (3) It shall be the duty of the Authority to discharge their functions as respects the licensing of independent radio services in the manner which they consider is best calculated—
  - (a) to facilitate the provision of licensed services which (taken as a whole) are of high quality and offer a wide range of programmes calculated to appeal to a variety of tastes and interests; and
  - (b) to ensure fair and effective competition in the provision of such services and services connected with them.
- (4) Subsection (3)(b) shall not be construed as affecting the discharge by the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission of any of his or their functions in connection with competition.
- (5) The Secretary of State may by order make such amendments of subsection (2)(a) as he considers appropriate—
  - (a) for including in that provision a requirement that one of the national services there referred to should be a service of a particular description, or
  - (b) for removing such a requirement from that provision;and (without prejudice to the generality of section 200(2)(b)) any such order may make such consequential amendments of section 98(1)(b)(iii) as the Secretary of State considers appropriate.
- (6) In subsection (2)(a)(ii) “pop music” includes rock music and other kinds of modern popular music which are characterised by a strong rhythmic element and a reliance on electronic amplification for their performance (whether or not, in the case of any particular piece of rock or other such music, the music in question enjoys a current popularity as measured by the number of recordings sold).

- (7) An order shall not be made under subsection (5) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

*General provisions about licences*

**86 Licences under Part III**

- (1) A licence shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as may be specified in the licence.
- (2) A licence may be granted by the Authority for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified; and (without prejudice to the generality of the preceding provision) a licence may be so granted for the provision of a service which to any extent consists in the simultaneous broadcasting of different programmes on different frequencies.
- (3) The following licences, namely—
- (a) any licence to provide a national, local or satellite service,
  - (b) any licence to provide a licensable sound programme service, and
  - (c) any licence to provide additional services,
- shall not continue in force for a period of more than eight years.
- (4) The Authority—
- (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and
  - (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;
- and nothing in this Part shall be construed as affecting the operation of this subsection or of section 88(1) or (2)(b) or (c) or 89(1).
- (5) The Authority may vary a licence by a notice served on the licence holder if—
- (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Authority about the variation.
- (6) Paragraph (a) of subsection (5) does not affect the operation of section 110(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 102(1) or section 118(1).
- (7) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Authority.
- (8) Without prejudice to the generality of subsection (7), the Authority shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.
- (9) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the Wireless Telegraphy Act 1949

or section 7 of the Telecommunications Act 1984 in connection with the provision of that service.

## **87 General licence conditions**

- (1) A licence may include—
  - (a) such conditions as appear to the Authority to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act;
  - (b) conditions enabling the Authority to supervise and enforce technical standards in connection with the provision of the licensed service;
  - (c) conditions requiring the payment by the licence holder to the Authority (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
  - (d) conditions requiring the licence holder to furnish the Authority, in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under this Act;
  - (e) conditions requiring the licence holder, if found by the Authority to be in breach of any condition of his licence, to reimburse to the Authority, in such circumstances as are specified in any conditions, any costs reasonably incurred by them in connection with the breach of that condition;
  - (f) conditions providing for such incidental and supplemental matters as appear to the Authority to be appropriate.
- (2) A licence may in particular include—
  - (a) conditions requiring the licence holder—
    - (i) to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified, or
    - (ii) (except to the extent that the Authority consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified; and
  - (b) conditions requiring the licence holder to permit—
    - (i) any employee of, or person authorised by, the Authority, or
    - (ii) any officer of, or person authorised by, the Secretary of State,to enter any premises which are used in connection with the broadcasting of the licensed service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.
- (3) The fees required to be paid to the Authority by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by the Authority; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Authority to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Authority regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 8.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Authority shall publish every such tariff in such manner as they consider appropriate.

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- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide the Authority with any information, and
  - (b) in purported compliance with that condition provides them with any information which is false in a material particular,
- he shall be taken for the purposes of sections 110 and 111 to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

## **88 Restrictions on the holding of licences**

- (1) The Authority shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - (b) that any requirements imposed by or under Parts III to V of that Schedule are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Authority may accordingly—
- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
    - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
  - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
  - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
  - (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
    - (i) shareholdings in the body, or
    - (ii) the directors of the body,
 where such proposals are known to the body;
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- (3) Where the Authority—
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
  - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,

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any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.

- (4) Those provisions shall not so have effect if the Authority decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as the Authority consider necessary or expedient to ensure that where—
  - (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,the Authority may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.
- (6) The Authority shall not serve any such notice on the licence holder unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—
  - (a) any change affecting the nature or characteristics of the body, or
  - (b) any change in the persons having control over or interests in the body,being (in either case) a change which is such that, if it fell to the Authority to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

## **89 Disqualification for holding licence on grounds of conviction for transmitting offence**

- (1) Subject to subsection (2), a person shall be disqualified for holding a licence under this Part if within the last five years he has been convicted of—
  - (a) an offence under section 1 of the Wireless Telegraphy Act 1949 (licensing of wireless telegraphy) which involved the making of any transmission by wireless telegraphy otherwise than under and in accordance with a licence under that section;
  - (b) an offence under the Marine, &c., Broadcasting (Offences) Act 1967; or
  - (c) an offence under section 97 below.
- (2) Subsection (1)(a) and (b) do not apply to any offence committed before 1st January 1989.
- (3) Every licence granted under this Part shall include conditions requiring the holder of the licence to do all that he can to ensure that no person who is disqualified for holding a licence by virtue of subsection (1) is concerned in the operation of any station for wireless telegraphy used in the provision of the licensed service.

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*General provisions about licensed services*

**90 General requirements as to licensed services**

- (1) The Authority shall do all that they can to secure that every licensed service complies with the following requirements, namely—
  - (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
  - (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality; and
  - (c) that its programmes do not include any technique which exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons listening to the programmes without their being aware, or fully aware, of what has occurred.
- (2) The Authority shall, in the case of every licensed service which is a national, local, satellite or licensable sound programme service, do all that they can to secure that the service complies with the following additional requirements, namely—
  - (a) the appropriate requirement specified in subsection (3);
  - (b) that (without prejudice to the generality of subsection (1)(b) or (3)(a)) there are excluded from its programmes all expressions of the views and opinions of the person providing the service on matters (other than sound broadcasting) which are of political or industrial controversy or relate to current public policy; and
  - (c) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those listening to the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (3) The appropriate requirement referred to in subsection (2)(a) is—
  - (a) where the licensed service is a national service, that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
  - (b) where the licensed service is a local, satellite or licensable sound programme service, that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on such matters.
- (4) In applying subsection (3)(a) to a national service a series of programmes may be considered as a whole; and in applying subsection (3)(b) to a local, satellite or licensable sound programme service the programmes included in that service shall be taken as a whole.
- (5) The Authority shall—
  - (a) draw up, and from time to time review, a code giving guidance—
    - (i) as to the rules to be observed in determining what constitutes a series of programmes for the purposes of subsection (4),
    - (ii) as to the rules to be observed in other respects in connection with the application of subsection (3)(a) in relation to a national service, and



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- (iii) as to the rules to be observed in connection with the application of subsection (3)(b) in relation to a local, satellite or licensable sound programme service; and
  - (b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
- and the Authority may make different provision in the code for different cases or circumstances.
- (6) The Authority shall publish the code drawn up under subsection (5), and every revision of it, in such manner as they consider appropriate.
  - (7) Nothing in this section or in sections 91 to 96 has effect in relation to any licensed service which is an additional service.

## **91 General code for programmes**

- (1) The Authority shall draw up, and from time to time review, a code giving guidance—
  - (a) as to the rules to be observed with respect to the inclusion in programmes of sounds suggestive of violence, particularly in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes;
  - (b) as to the rules to be observed with respect to the inclusion in programmes of appeals for donations; and
  - (c) as to such other matters concerning standards and practice for programmes as the Authority may consider suitable for inclusion in the code;and the Authority shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.
- (2) In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Authority shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes.
- (3) Before drawing up or revising the code under this section the Authority shall (to such extent as they consider it reasonably practicable to do so) consult every person who is the holder of a licence under this Part.
- (4) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

## **92 General provisions as to advertisements**

- (1) The Authority shall do all that they can to secure that the rules specified in subsection (2) are complied with in relation to licensed services.
- (2) Those rules are as follows—
  - (a) a licensed service must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or

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- (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in a licensed service there must be no unreasonable discrimination either against or in favour of any particular advertiser; and
  - (c) a licensed service must not, without the previous approval of the Authority, include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the licence holder is prohibited from advertising by virtue of any provision of section 93.
- (3) Nothing in subsection (2) shall be construed as prohibiting the inclusion in a licensed service of any party political broadcast which complies with the rules (so far as applicable) made by the Authority for the purposes of section 107.
- (4) After consultation with the Authority the Secretary of State may make regulations amending, repealing, or adding to the rules specified in subsection (2); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (5) The Authority shall not act as an advertising agent.

### **93 Control of advertisements**

- (1) It shall be the duty of the Authority—
- (a) after the appropriate consultation, to draw up, and from time to time review, a code—
    - (i) governing standards and practice in advertising and in the sponsoring of programmes, and
    - (ii) prescribing the advertisements and methods of advertising or sponsorship to be prohibited, or to be prohibited in particular circumstances; and
  - (b) to do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
- and the Authority may make different provision in the code for different kinds of licensed services.
- (2) In subsection (1) “the appropriate consultation” means consultation with—
- (a) the Independent Television Commission,
  - (b) such bodies or persons appearing to the Authority to represent each of the following, namely—
    - (i) listeners,
    - (ii) advertisers, and
    - (iii) professional organisations qualified to give advice in relation to the advertising of particular products,
 as the Authority think fit, and
  - (c) such other bodies or persons who are concerned with standards of conduct in advertising as the Authority think fit,

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- and (to the extent that the Authority consider such consultation to be reasonably practicable) consultation with every person who is the holder of a licence under this Part.
- (3) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.
  - (4) The Authority shall—
    - (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be included in licensed services and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of such services; and
    - (b) carry out any directions which he may give to them in respect of such matters.
  - (5) The Authority may, in the discharge of a general responsibility with respect to advertisements and methods of advertising and sponsorship, impose requirements as to advertisements or methods of advertising or sponsorship which go beyond the requirements imposed by the code.
  - (6) The methods of control exercisable by the Authority for the purpose of securing that the provisions of the code are complied with, and for the purpose of securing compliance with requirements imposed under subsection (5) which go beyond the requirements of the code, shall include a power to give directions to the holder of a licence—
    - (a) with respect to the classes and descriptions of advertisements and methods of advertising or sponsorship to be excluded, or to be excluded in particular circumstances; or
    - (b) with respect to the exclusion of a particular advertisement, or its exclusion in particular circumstances.
  - (7) Directions under this section may be, to any degree, either general or specific and qualified or unqualified.
  - (8) The Authority shall, in drawing up or revising the code, take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

#### **94 Government control over licensed services**

- (1) If it appears to him to be necessary or expedient to do so in connection with his functions as such, the Secretary of State or any other Minister of the Crown may at any time by notice require the Authority to direct the holders of any licences specified in the notice to publish in their licensed services, at such times as may be specified in the notice, such announcement as is so specified; and it shall be the duty of the Authority to comply with the notice.
- (2) Where the holder of a licence publishes any announcement in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (3) The Secretary of State may at any time by notice require the Authority to direct the holders of any licences specified in the notice to refrain from including in the programmes included in their licensed services any matter or classes of matter

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specified in the notice; and it shall be the duty of the Authority to comply with the notice.

- (4) Where the Authority—
- (a) have given the holder of any licence a direction in accordance with a notice under subsection (3), or
  - (b) in consequence of the revocation by the Secretary of State of such a notice, have revoked such a direction,
- or where such a notice has expired, the holder of the licence in question may publish in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (5) The powers conferred by this section are in addition to any power specifically conferred on the Secretary of State by any other provision of this Act.
- (6) In relation to any licensed service provided from a place in Northern Ireland, the reference in subsection (1) to a Minister of the Crown includes a reference to the head of any Northern Ireland department.

## **95 Monitoring by Authority of programmes included in licensed services**

- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Authority may make and use recordings of those programmes or any part of them.
- (2) A licence shall include conditions requiring the licence holder—
- (a) to retain, for a period not exceeding 42 days, a recording of every programme included in the licensed service;
  - (b) at the request of the Authority, to produce to them any such recording for examination or reproduction;
  - (c) at the request of the Authority, to produce to them any script or transcript of a programme included in the licensed service which he is able to produce to them.
- (3) Nothing in this Part shall be construed as requiring the Authority, in the discharge of their duties under this Part as respects licensed services and the programmes included in them, to listen to such programmes in advance of their being included in such services.

## **96 Audience research**

- (1) The Authority shall make arrangements—
- (a) for ascertaining the state of public opinion concerning programmes included in licensed services; and
  - (b) for the purpose of assisting them to perform their functions under Chapter II in connection with the programmes to be included in national and local services, for ascertaining the types of programme that members of the public would like to be included in licensed services.
- (2) Those arrangements shall—
- (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Authority; and

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- (b) include provision for full consideration by the Authority of the results of any such research.

*Prohibition on providing unlicensed independent radio services*

**97 Prohibition on providing independent radio services without a licence**

- (1) Subject to subsection (2), any person who provides any independent radio service without being authorised to do so by or under a licence under this Part shall be guilty of an offence.
- (2) The Secretary of State may, after consultation with the Authority, by order provide that subsection (1) shall not apply to such services or descriptions of services as are specified in the order.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) No proceedings in respect of an offence under this section shall be instituted—
  - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) Without prejudice to subsection (3) above, compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.