



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

### CHAPTER II

#### SOUND BROADCASTING SERVICES

##### *Enforcement of licences*

- 109 Power to require scripts etc. or broadcasting of correction or [<sup>F1</sup>a statement of findings].**
- (1) If [<sup>F2</sup>OFCOM] are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by [<sup>F2</sup>OFCOM] under or by virtue of any provision of this Part, they may serve on him a notice—
- (a) stating that [<sup>F2</sup>OFCOM] are so satisfied as respects any specified condition or direction;
  - (b) stating the effect of subsection (2); and
  - (c) specifying for the purposes of that subsection a period not exceeding twelve months.
- (2) If, at any time during the period specified in a notice under subsection (1), [<sup>F2</sup>OFCOM] are satisfied that the licence holder has again failed to comply with any such condition or direction as is mentioned in that subsection (whether or not the same as the one specified in the notice), [<sup>F2</sup>OFCOM] may direct him—
- (a) to provide [<sup>F2</sup>OFCOM] in advance with such scripts and particulars of the programmes to be included in the licensed service as are specified in the direction; and

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- (b) in relation to such of those programmes as will consist of or include recorded matter, to produce to [F2OFCOM] in advance for examination or reproduction such recordings of that matter as are so specified;
- and a direction under this subsection shall have effect for such period, not exceeding six months, as is specified in the direction.
- (3) If [F2OFCOM] are satisfied—
- (a) that the holder of a licence has failed to comply with any condition of the licence, and
  - (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or [F1a statement of findings] (or both) under this subsection,
- they may (subject to subsection (4)) direct the licence holder to include in the licensed service a correction or [F1a statement of findings] (or both) in such form, and at such time or times, as they may determine.
- (4) [F2OFCOM] shall not give any person a direction under subsection (3) unless they have given him a reasonable opportunity of making representations to [F2OFCOM] about the matters complained of.
- (5) Where the holder of a licence includes a correction or [F1a statement of findings] in the licensed service in pursuance of a direction under subsection (3), he may announce that he is doing so in pursuance of such a direction.
- [F3(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.]

#### Textual Amendments

- F1** Words in s. 109 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 344(2)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with [art. 11](#))
- F2** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 50** (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with [art. 11](#))
- F3** S. 109(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 344(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with [art. 11](#))

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

- C1** Pt. III: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 1 para. 5** (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with [art. 11](#))
- C2** S. 109 applied (with modifications) (1.10.1996) by [1996 c. 55](#), **ss. 62(10)**, 66(10) (with s. 43(1)(6)); [S.I. 1996/2120](#), **art. 5**, **Sch. 2**
- C3** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 250(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with [art. 11](#))
- C4** S. 109(3) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), **art. 1**, **Sch. para. 2(b)** (with [art. 5](#))

## 110 Power to impose financial penalty or suspend or shorten licence period.

- (1) If [F2OFCOM] are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by them

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under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—

- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to [F2OFCOM];
- (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years; or
- (c) a notice suspending the licence for a specified period not exceeding six months.

[F4(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).

(1B) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the qualifying revenue for his last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).

(1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above.]

- (3) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of any other licence shall not exceed [F5£250,000].
- (4) [F2OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a), (b) or (c) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [F2OFCOM] may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (6) It is hereby declared that any exercise by [F2OFCOM] of their powers under subsection (1) of this section in respect of any failure to comply with any condition or direction shall not preclude any exercise by them of their powers under section 109 in respect of that failure.

[F6(7) . . . . .]

**Textual Amendments**

**F2** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 50](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F4** S. 110(1A)-(1D) substituted for s. 110(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 7\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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- F5** Words in s. 110(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 7\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F6** S. 110(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C3** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 250\(3\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C5** S. 110(1B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C6** S. 110(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, [Sch. para. 3\(d\)](#) (with art. 5)
- C7** S. 110(3): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**111 Power to revoke licences.**

- (1) If [<sup>F2</sup>OFCOM] are satisfied—
- (a) that the holder of a licence granted under this Chapter is failing to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, and
  - (b) that that failure is such that, if not remedied, it would justify the revocation of the licence,
- they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
- (a) stating that [<sup>F2</sup>OFCOM] are satisfied as mentioned in subsection (1);
  - (b) specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and
  - (c) stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, [<sup>F2</sup>OFCOM] will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) [<sup>F2</sup>OFCOM] are satisfied—
- (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (4) If [<sup>F2</sup>OFCOM] are satisfied in the case of any national licence—
- (a) that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and
  - (b) that it is appropriate for them to do so,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (5) If [<sup>F2</sup>OFCOM] are satisfied—

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- (a) that the holder of a licence granted under this Chapter provided them, in connection with his application for the licence, with information which was false in a material particular, or
- (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,
- they may (subject to subsection (8)) serve on him a notice revoking his licence.
- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.
- (7) If it appears to [F<sup>2</sup>OFCOM] to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.
- (8) [F<sup>2</sup>OFCOM] shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

#### Textual Amendments

- F2** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 50](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

- C3** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 250\(3\), 411\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- C8** S. 111 modified (1.10.1996) by [1996 c. 55, s. 43\(5\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)  
S. 111 applied (with modifications) (1.10.1996) by [1996 c. 55, ss. 62\(10\), 66\(10\)](#) (with s. 43(1)(6));  
[S.I. 1996/2120, art. 5, Sch. 2](#)  
S. 111 applied (with modifications) (1.10.1996) by [1996 c. 55, s. 59\(8\)\(9\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)  
S. 111 modified (1.10.1996) by [1996 c. 55, s. 66\(12\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)
- C9** S. 111(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 3\(e\)](#) (with art. 5)

#### [F<sup>7</sup>111A Enforcement of licences held by BBC companies.

Where [F<sup>2</sup>OFCOM] —

- (a) serve a notice on a BBC company under any provision of section 109, 110 or 111, or
- (b) receive any written representations from a BBC company under section 109(4), 110(4) or 111(8),

[F<sup>2</sup>OFCOM] shall send a copy of the direction, notice or representations to the Secretary of State.]

#### Textual Amendments

- F2** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 50](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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**F7** S. 111A inserted (24.7.1996) by 1996 c. 55, s. 136, 149(1)(f), **Sch. 8 para. 7** (with s. 43(1)(6))

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

**C3** Ss. 109-111A applied (with modifications) (29.12.2003) by **Communications Act 2003 (c. 21), ss. 250(3), 411(2)** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

**[<sup>F8</sup>111B Suspension of licences for inciting crime or disorder**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence granted under this Chapter if they are satisfied that—
  - (a) the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,
  - (b) in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act 2003, and
  - (c) the failure would justify the revocation of the licence.
- (2) A notice under this subsection must—
  - (a) state that OFCOM are satisfied as mentioned in subsection (1),
  - (b) specify the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned there,
  - (c) state that OFCOM may revoke the licence after the end of the period of 21 days beginning with the day on which the notice is served on the licence holder, and
  - (d) inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either—
  - (a) the revocation of the licence takes effect, or
  - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder in the 21 day period mentioned in subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they must serve on the licence holder a notice revoking the licence.
- (5) The revocation of a licence by a notice under subsection (4) takes effect from whatever time is specified in the notice.
- (6) That time must not be earlier than the end of the period of 28 days beginning with the day on which the notice under subsection (4) is served on the licence holder.
- (7) Section 111 does not apply to the revocation of a licence under this section.]

**Textual Amendments**

**F8** S. 111B substituted (27.6.2017) by **Digital Economy Act 2017 (c. 30), ss. 91(1), 118(2)**

**Changes to legislation:**

There are currently no known outstanding effects for the Broadcasting Act 1990, Cross Heading:  
Enforcement of licences.