



Broadcasting Act 1990

1990 CHAPTER 42

PART III

INDEPENDENT RADIO SERVICES

CHAPTER II

SOUND BROADCASTING SERVICES

National services

98 Applications for national licences

- (1) Where the Authority propose to grant a licence to provide a national service, they shall publish, in such manner as they consider appropriate, a notice—
 - (a) stating that they propose to grant such a licence;
 - (b) specifying—
 - (i) the period for which the licence is to be granted,
 - (ii) the minimum area of the United Kingdom for which the service is to be provided,
 - (iii) if the service is to be one falling within section 85(2)(a)(i) or (ii), that the service is to be such a service, and
 - (iv) if there is any existing licensed national service, that the service is to be one which caters for tastes and interests different from those already catered for by any such service (as described in the notice);
 - (c) inviting applications for the licence and specifying the closing date for such applications; and
 - (d) specifying—
 - (i) the fee payable on any application made in pursuance of the notice, and

Status: This is the original version (as it was originally enacted).

- (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 102(1)(c) if he were granted the licence.
- (2) In determining the minimum area of the United Kingdom for which a national service is to be provided the Authority shall have regard to the following considerations, namely—
- (a) that the service in question should, so far as is reasonably practicable, make the most effective use of the frequency or frequencies on which it is to be provided; but
 - (b) that the area for which it is to be provided should not be so extensive that the costs of providing it would be likely to affect the ability of the person providing the service to maintain it.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the applicant’s proposals for providing a service that would both—
 - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), and
 - (ii) consist of a diversity of programmes calculated to appeal to a variety of tastes and interests;
 - (b) the fee specified in the notice under subsection (1)(d)(i);
 - (c) the applicant’s proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his proposed service;
 - (d) the applicant’s cash bid in respect of the licence;
 - (e) such information as the Authority may reasonably require—
 - (i) as to the applicant’s present financial position and his projected financial position during the period for which the licence would be in force, and
 - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
 - (f) such other information as the Authority may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under any of paragraphs (a), (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Authority shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
 - (b) the proposals submitted by him under subsection (3)(a); and
 - (c) such other information connected with his application as the Authority consider appropriate.
- (7) In this section “programme” does not include an advertisement.

Status: This is the original version (as it was originally enacted).

- (8) In this Part “cash bid”, in relation to a licence, means an offer to pay to the Authority a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

99 Procedure to be followed by Authority in connection with consideration of applications for national licences

- (1) Where a person has made an application for a national licence in accordance with section 98, the Authority shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 100 unless it appears to them—
- (a) that his proposed service would both—
 - (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, and
 - (ii) consist of such a diversity of programmes as is mentioned in subsection (3)(a) of that section; and
 - (b) that he would be able to maintain that service throughout the period for which the licence would be in force.
- (2) Any reference to an applicant in section 100 (except in section 100(9)(b)) is accordingly a reference to an applicant in whose case it appears to the Authority that the requirements of subsection (1)(a) and (b) above are satisfied.

100 Award of national licence to person submitting highest cash bid

- (1) Subject to the following provisions of this section, the Authority shall, after considering all the cash bids submitted by the applicants for a national licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Authority shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) The Authority may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to the Authority, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (4) If it appears to the Authority, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—

Status: This is the original version (as it was originally enacted).

- (a) they shall refer his application to the Secretary of State, together with—
 - (i) a copy of all documents submitted to them by the applicant, and
 - (ii) a summary of their deliberations on the application; and
 - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (5) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (6) In subsections (4) and (5) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
- (a) paying any amounts payable by him by virtue of section 102(1), or
 - (b) otherwise financing the provision of his proposed service.
- (7) Where the Authority are, by virtue of subsection (4), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (11)) have effect as if that person had not made an application for the licence.
- (8) Where the Authority have awarded a national licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (9) in such manner as they consider appropriate; and
 - (b) grant the licence to that person.
- (9) The matters referred to in subsection (8)(a) are—
- (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
 - (b) the name of every other applicant in whose case it appeared to the Authority that the requirement specified in section 99(1)(a) was satisfied;
 - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Authority’s reasons for the licence having been so awarded; and
 - (d) such other information as the Authority consider appropriate.
- (10) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (9) shall have effect as if—
- (a) paragraph (b) were omitted; and
 - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (11) Subsections (1) to (6) shall not have effect as mentioned in subsection (7) if the Authority decide that it would be desirable to publish a fresh notice under section 98 in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section 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 further licence to provide the service in question.

101 Failure to begin providing licensed service and financial penalties on revocation of licence

- (1) If at any time after a national licence has been granted to any person but before the licence has come into force—
 - (a) that person indicates to the Authority that he does not intend to provide the service in question, or
 - (b) the Authority for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force, then, subject to subsection (2)—
 - (i) the Authority shall serve on him a notice revoking the licence as from the time the notice is served on him, and
 - (ii) section 100 shall (subject to section 100(11)) have effect as if he had not made an application for the licence.
- (2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Authority have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where the Authority revoke a national licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a financial penalty of the prescribed amount.
- (4) In subsection (3) “the prescribed amount” means—
 - (a) where—
 - (i) the licence is revoked under this section, or
 - (ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended, 7 per cent. of the amount which the Authority estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 102(2) to (6)); and
 - (b) in any other case, 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 122(4), be recoverable by the Authority as a debt due to them from any person who controls that body.

102 Additional payments to be made in respect of national licences

- (1) A national licence shall include conditions requiring the licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
 - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
 - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
 - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying

Status: This is the original version (as it was originally enacted).

revenue for that accounting period as was specified in relation to the licence under section 98(1)(d)(ii).

- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
 - (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
 - (b) in respect of charges made in that period for the reception of programmes included in that service.
- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—
 - (a) the licence holder or any connected person, and
 - (b) a person acting as an advertising agent,the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of the commission.
- (5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.
- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A national licence may include conditions—
 - (a) enabling the Authority to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—
 - (a) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
 - (b) providing for the adjustment of any overpayment or underpayment.
- (9) Where—
 - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or

Status: This is the original version (as it was originally enacted).

(b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,

any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

(10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—

(a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and

(b) the retail prices index for the month of November in the year preceding the relevant year;

and for this purpose “the retail prices index” means the general index of prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer.

103 Restriction on changes in control over holder of national licence

(1) Where—

(a) any change in the persons having control over—

(i) a body to which a national licence has been awarded or transferred in accordance with this Part of this Act, or

(ii) an associated programme provider,

takes place within the relevant period, and

(b) that change takes place without having been previously approved for the purposes of this section by the Authority,

then (subject to subsection (5)) the Authority may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.

(2) In subsection (1)—

“associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and appears to the Authority to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service; and

“the relevant period”, in relation to a national licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;

and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection as if a body to which a national licence has been awarded but not yet granted were the holder of such a licence.

(3) The Authority shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 98(3)(a) by that body (or, as the case may be, by the person to whom the licence was originally awarded).

Status: This is the original version (as it was originally enacted).

- (4) The Authority may refuse so to approve any such change if, in any circumstances not falling within subsection (3), they consider it appropriate to do so.
- (5) The Authority shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.
- (6) Where under subsection (1) the Authority refuse to grant a licence to any body, section 100 shall (subject to section 100(11)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 111 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.