



# Broadcasting Act 1996

## 1996 CHAPTER 55

An Act to make new provision about the broadcasting in digital form of television and sound programme services and the broadcasting in that form on television or radio frequencies of other services; to amend the Broadcasting Act 1990; to make provision about rights to televise sporting or other events of national interest; to amend in other respects the law relating to the provision of television and sound programme services; to provide for the establishment and functions of a Broadcasting Standards Commission and for the dissolution of the Broadcasting Complaints Commission and the Broadcasting Standards Council; to make provision for the transfer to other persons of property, rights and liabilities of the British Broadcasting Corporation relating to their transmission network; and for connected purposes. [24th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Extent Information

- E1** Act extends mainly to the United Kingdom but for extent to Northern Ireland and application to the Isle of Man and the Channel Islands see s. 150.

### Modifications etc. (not altering text)

- C1** Act: power to modify conferred (18.9.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 407**, 411(2) (with [Sch. 18](#)); [S.I. 2003/1900](#), [art. 2\(2\)](#), [Sch. 2](#)
- C2** Act extended (with modifications) (29.12.2003) by [Broadcasting \(Guernsey\) Order 2003 \(S.I. 2003/3192\)](#), [art. 2](#), [Sch. 1](#)
- C3** Act extended (with modifications) (29.12.2003) by [Broadcasting \(Jersey\) Order 2003 \(S.I. 2003/3203\)](#), [art. 2\(d\)](#), [Sch. 1](#) (as amended (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), [art. 6\(2\)](#), [Sch. 2](#))
- C4** Act extended (with modifications) (29.12.2003) by [Broadcasting \(Isle of Man\) Order 2003 \(S.I. 2003/3193\)](#), [art. 2](#), [Sch. 1](#) (as amended (27.2.2004) by [The Broadcasting and Communications \(Isle of Man\) Order 2004 \(S.I. 2004/309\)](#), [art. 2\(1\)](#), [Sch. Pt. 1](#))

**Status:** Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.  
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C5 Act: power to extend conferred (27.4.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss.**, 118(1), 119(7)(8)(c)

**PART I**

DIGITAL TERRESTRIAL TELEVISION BROADCASTING

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

C6 Pt. 1: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 1 para. 3(a)** (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

C7 Pt. 1 modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 215(10)(c)**, 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

C8 Pt. 1 modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 241(1)**, 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

C9 Pt. 1 applied in part (with modifications) (14.2.2012) by [The Local Digital Television Programme Services Order 2012 \(S.I. 2012/292\)](#), arts. 1, 4, **Sch. Pt. 1** (as amended (12.7.2012) by [The Broadcasting \(Local Digital Television Programme Services and Independent Productions\) \(Amendment\) Order 2012 \(S.I. 2012/1842\)](#), arts. 1, 3)

*Introductory*

**1 Multiplex services and digital programme services.**

[<sup>F1</sup>(1) In this Part “multiplex service” means (except where the context otherwise requires) a television multiplex service.]

<sup>F2</sup>(1A) .....

<sup>F2</sup>(2) .....

<sup>F2</sup>(3) .....

(4) In this Part “digital programme service” means a service consisting in the provision by any person of television programmes (together with any ancillary services, as defined by section 24(2)) with a view to their being broadcast in digital form [<sup>F3</sup>so as to be available for reception by members of the public] , whether by him or by some other person, but does not include—

[<sup>F4</sup>(za) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service,]

(a) a qualifying service,

(b) a teletext service, or

(c) any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures, except, in the case of a service falling within paragraph (b) or (c), to the extent that it is an ancillary service.

[<sup>F5</sup>(4A) In subsection (4), “available for reception by members of the public” means available for reception by members of the public (within the meaning of Part 3 of the

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Communications Act 2003) in the United Kingdom or another EEA State, or in an area of the United Kingdom or of such a State.]

(5) The Secretary of State may, if having regard to developments in broadcasting technology he considers it appropriate to do so, by order amend the definition of “digital programme service” in subsection (4).

(6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

[<sup>F6</sup>(7) In this section “broadcast” means broadcast otherwise than from a satellite.]

#### Textual Amendments

- F1** S. 1(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 74\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F2** S. 1(1A)-(3) 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)
- F3** Words in s. 1(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 74\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F4** S. 1(4)(za) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), [4](#)
- F5** S. 1(4A) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 74\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F6** S. 1(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 74\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## 2 Meaning of “independent analogue broadcaster” and “qualifying service”.

[<sup>F7</sup>(1) . . . . .]

[<sup>F8</sup>(2) In this Part “qualifying service” means any of the following, so far as they are provided with a view to their being broadcast in digital form—

- (a) a television broadcasting service included in Channel 3;
- (b) Channel 4;
- (c) Channel 5;
- (d) S4C Digital;
- (e) a television programme service provided by the Welsh Authority with the approval of the Secretary of State under section 205 of the Communications Act 2003;
- (f) the digital public teletext service.]

[<sup>F9</sup>(7) . . . . .]

#### Textual Amendments

- F7** S. 2(1) 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)
- F8** S. 2(2) substituted for s. 2(2)-(6) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 75](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F9** S. 2(6)(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)

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### Commencement Information

- II** S. 2 wholly in force at 1.10.1996; s. 2 not in force at Royal Assent see s. 149; s. 2 in force for certain purposes at 15.9.1996 and wholly in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1

## *General provisions about licences*

### 3 Licences under Part I.

- (1) Any licence granted by [F10OFCOM] under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of this Part.
- (2) A licence may be so granted 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.
- (3) [F11OFCOM] —
  - (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 5(1) or (2)(b) or (c).
- (4) [F11OFCOM] 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 a licence having effect for a specified period 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 [F11OFCOM] about the variation.
- (5) Paragraph (a) of subsection (4) does not affect the operation of section 17(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 13(1).
- (6) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of [F11OFCOM] .
- (7) Without prejudice to the generality of subsection (6), [F11OFCOM] 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.
- [F12(8) The holding by a person of a licence under this Part shall not relieve him of—
  - (a) any liability in respect of a failure to hold [F13a licence under section 8 of the Wireless Telegraphy Act 2006] ; or
  - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).]

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### Textual Amendments

- F10** Words in s. 3(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 76\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F11** Words in s. 3(3)-(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 76\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F12** S. 3(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 76\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F13** Words in s. 3(8)(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 17](#)

## 4 General licence conditions.

### (1) A licence may include—

- (a) such conditions as appear to [F14OFCOM] to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under [F15this Act, the 1990 Act or the Communications Act 2003] ;
- (b) conditions requiring the payment by the licence holder to [F14OFCOM] (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;
- (c) conditions requiring the licence holder to provide [F14OFCOM] , 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 [F16this Act, the 1990 Act or the Communications Act 2003] ;
- (d) conditions providing for such incidental and supplemental matters as appear to [F14OFCOM] to be appropriate.

### (2) A licence may in particular include conditions requiring the licence holder—

- (a) to comply with any direction given by [F14OFCOM] as to such matters as are specified in the licence or are of a description so specified, or
- (b) (except to the extent that [F14OFCOM] 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.

### (3) The fees required to be paid to [F14OFCOM] by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by [F14OFCOM]<sup>F17</sup>....

### (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and [F14OFCOM] shall publish every such tariff in such manner as they consider appropriate.

### (5) Where the holder of any licence—

- (a) is required by virtue of any condition imposed under this Part to provide [F14OFCOM] with any information, and
- (b) in purported compliance with that condition provides them with information which is false in a material particular,

he shall be taken for the purposes of sections 17, 23 and 27 of this Act and section 42 of the 1990 Act to have failed to comply with that condition.

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- (6) Nothing in this Part 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).

#### Textual Amendments

- F14** Words in s. 4 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 77(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F15** Words in s. 4(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 77(3)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F16** Words in s. 4(1)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 77(3)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F17** Words in s. 4(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 77\(4\)](#), **Sch. 19(1)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C10** S. 4(1)(c) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), arts. 1, **10(1)(a)(2)(b)** (with art. 5)

## 5 Restrictions on holding of licences under Part I.

- (1) [<sup>F18</sup>OFCOM] 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 the 1990 Act (as amended by this Act); and
  - [<sup>F19</sup>(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) [<sup>F18</sup>OFCOM] 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

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- (ii) the directors of the body,  
where such proposals are known to the body;
- [<sup>F20</sup>(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
  - (i) shareholdings in the body; or
  - (ii) the directors of the body;
- (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
  - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
  - (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 [<sup>F18</sup>OFCOM] —
  - (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,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 [<sup>F18</sup>OFCOM] 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 [<sup>F18</sup>OFCOM] 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,[<sup>F18</sup>OFCOM] 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) [<sup>F18</sup>OFCOM] shall not serve any such notice on the licence holder unless—
  - (a) they have notified him of the matters [<sup>F21</sup>constituting their grounds for revoking the licence] and given him a reasonable opportunity of making representations to them about those matters, and
  - (b) in a case where the relevant change is one falling within subsection (7)—
    - (i) they have also given him an opportunity of complying with [<sup>F22</sup>the requirements imposed by or under Schedule 14 to the Communications Act 2003] within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.

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- (7) A relevant change falls within this subsection if it consists only in one or more of the following—
- <sup>F23</sup>(a) .....
  - (b) a change in the national market share (within the meaning of [<sup>F24</sup>Part 1 of Schedule 14 to the Communications Act 2003] ) of one or more national newspapers (within the meaning of that Part of that Schedule), or
  - (c) a change in the local market share (within the meaning of [<sup>F25</sup>section 5 of the Broadcasting Act 1990] ) in a particular area of one or more local newspapers (within the meaning of [<sup>F26</sup>Part 1 of Schedule 14 to the Communications Act 2003] ).
- (8) 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,
  - (b) any change in the persons having control over or interests in the body, or
  - (c) any other change giving rise to [<sup>F27</sup>a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,]
- being (in any case) a change which is such that, if it fell to [<sup>F18</sup>OFCOM] 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.

#### Textual Amendments

- F18** Words in s. 5 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F19** S. 5(1)(b)(c) substituted for s. 5(1)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 350\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F20** S. 5(2)(da)(db) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F21** Words in s. 5(6)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F22** Words in s. 5(6)(b)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F23** S. 5(7)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(5\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F24** Words in s. 5(7)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F25** Words in s. 5(7)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 14\(a\)](#)
- F26** Words in s. 5(7)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 14\(b\)](#)
- F27** Words in s. 5(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C11** S. 5 modified (temp.) (17.7.2003) by [The Communications Act 2003 \(Commencement No. 1\) Order 2003 \(S.I. 2003/1900\), art. 5](#)



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## Multiplex services

### <sup>F28</sup>6 Assignment of frequencies by Secretary of State.

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#### Textual Amendments

**F28** S. 6 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)

### 7 Multiplex licences.

- (1) Where [<sup>F29</sup>OFCOM] propose to grant a licence to provide a multiplex service (in this Part referred to as a “multiplex licence”) they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence,
  - (b) specifying the frequency or frequencies on which the service is to be provided,
  - (c) specifying, in such manner as [<sup>F29</sup>OFCOM] consider appropriate, the area or areas in the United Kingdom within which the frequency or frequencies is or are to be available,
  - (d) inviting applications for the licence and specifying the closing date for such applications,
  - (e) specifying the fee payable on any application, and
  - (f) stating whether any percentage of multiplex revenue for each accounting period would be payable by an applicant in pursuance of section 13 if he were granted the licence and, if so, specifying that percentage.
- (2) Unless an order under section 13(2) is in force—
  - (a) the consent of the Secretary of State shall be required for so much of the notice as relates to the matters specified in subsection (1)(f), and
  - (b) [<sup>F29</sup>OFCOM] may if they think fit (with that consent) specify under subsection (1)(f)—
    - (i) different percentages in relation to different accounting periods falling within the period for which the licence would be in force, and
    - (ii) a nil percentage in relation to any accounting period so falling.
- (3) When publishing a notice under subsection (1), [<sup>F29</sup>OFCOM] —
  - (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii) and (f), and
  - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) An application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
  - (a) the fee specified in the notice under subsection (1)(e),
  - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—

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- (i) the parts of the area specified under subsection (1)(c) which would be within the coverage area of the service,
    - (ii) the timetable in accordance with which that coverage would be achieved, and
    - (iii) the technical means by which it would be achieved,
  - (c) the applicant’s proposals as to the number of digital programme services to be broadcast, as to the characteristics of each of those services and as to the areas in which they would be provided,
  - [<sup>F30</sup>(ca) the applicant’s proposals as to the number (if any) of digital sound programmes services which are to be broadcast, as to the characteristics of each of those services and as to the areas in which they would be provided;]
  - (d) the applicant’s proposals as to the timetable in accordance with which the broadcasting of each of [<sup>F31</sup>the services mentioned in paragraphs (c) and (ca)] would begin,
  - (e) the applicant’s proposals as to the broadcasting of digital additional services,
  - (f) the applicant’s proposals for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving all the multiplex services available in that area,
  - (g) such information as [<sup>F29</sup>OFCOM] may reasonably require 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
  - (h) such other information as [<sup>F29</sup>OFCOM] may reasonably require for the purpose of considering the application.
- (5) In subsection (4)(f) “acquisition” includes acquisition on hire or loan.
- (6) At any time after receiving such an application and before determining it, [<sup>F29</sup>OFCOM] may require the applicant to furnish additional information under any of paragraphs (b) to (h) of subsection (4).
- (7) Any information to be furnished to [<sup>F29</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (8) [<sup>F29</sup>OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under subsection (1) as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,
    - (ii) the proposals submitted by him under subsection (4)(c), and
    - (iii) such other information connected with his application as [<sup>F29</sup>OFCOM] consider appropriate; and
  - (b) a notice—
    - (i) inviting representations to be made to them with respect to any of the applications, and
    - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

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### Textual Amendments

- F29** Words in s. 7 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 79\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F30** S. 7(4)(ca) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 79\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F31** Words in s. 7(4)(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 79\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### Modifications etc. (not altering text)

- C12** S. 7(1)(f) restricted (*temp.* from 20.11.1996 to 29.9.2002) in relation to any notice published by the Commission by [S.I. 1996/2759, arts. 2, 3](#)

## 8 Award of multiplex licences.

- (1) Where [<sup>F32</sup>OFCOM] have published a notice under section 7(1), they shall in determining whether, or to whom, to award the multiplex licence in question, have regard to the extent to which, taking into account the matters specified in subsection (2) and any representations made to them in pursuance of section 7(8)(b) with respect to those matters, the award of the licence to each applicant would be calculated to promote the development of digital television broadcasting in the United Kingdom otherwise than by satellite.
- (2) The matters referred to in subsection (1) are—
- the extent of the coverage area proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 7(4)(b),
  - the timetables proposed by the applicant under section 7(4)(b)(ii) and (d),
  - the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
  - the capacity of the digital programme services proposed to be included in the service to appeal to a variety of tastes and interests,
  - any proposals by the applicant for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving all the multiplex services available in that area, and
  - whether, in contracting or offering to contract with persons providing digital programme services [<sup>F33</sup>, digital sound programme service] or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.
- (3) In subsection (2)(e) “acquisition” includes acquisition on hire or loan.
- (4) Where [<sup>F32</sup>OFCOM] have awarded a multiplex licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- publish in such manner as they consider appropriate—
    - the name of the person to whom the licence has been awarded, and
    - such other information as [<sup>F32</sup>OFCOM] consider appropriate, and
  - grant the licence to that person.

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#### Textual Amendments

- F32** Words in s. 8 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 80\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F33** Words in s. 8(2)(f) inserted (29.12.2003) by virtue of [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 80\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### 9 Power to require two or more multiplex licences to be granted to one person.

- (1) [<sup>F34</sup>OFCOM] may, before publishing a notice under section 7(1), determine that two or more multiplex licences are on that occasion to be granted to one person.
- (2) Where [<sup>F34</sup>OFCOM] have so determined, they shall publish a single notice under section 7(1) in relation to the licences.
- (3) In relation to any application made in pursuance of such a notice—
  - (a) references in section 7(4) to the proposed service shall have effect as references to each of the proposed services,
  - (b) the reference in section 8(1) to the multiplex licence shall have effect as a reference to all the licences concerned,
  - (c) in section 8(2), the reference in paragraph (d) to the proposed service shall have effect as a reference to all the proposed services considered together, and other references to the proposed service shall have effect as references either to each of the proposed services or to all of them considered together, as [<sup>F34</sup>OFCOM] consider appropriate.
- (4) Nothing in this section applies in relation to the renewal of a multiplex licence.

#### Textual Amendments

- F34** Words in s. 9 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 81](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### 10 Award of multiplex licence subject to conditions.

- (1) [<sup>F35</sup>OFCOM] may, when awarding a multiplex licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
  - (a) any duties which are or may be imposed on them, or on the licence holder, by or under [<sup>F36</sup>this Act, the 1990 Act or Part 3 of the Communications Act 2003], and
  - (b) any information provided to them under section 7(4)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where [<sup>F35</sup>OFCOM] determine that any condition imposed by them in relation to a multiplex licence in pursuance of subsection (1) has not been satisfied, section 8 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.

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- (3) Section 8 shall not so have effect if [<sup>F35</sup>OFCOM] decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.

#### Textual Amendments

- F35** Words in s. 10 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 82\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F36** Words in s. 10(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 82\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## 11 Failure to begin providing licensed service and financial penalties on revocation of licence.

- (1) Subject to subsection (2), subsection (3) applies where at any time after a multiplex licence has been granted to any person but before the licence has come into force—
- that person indicates to [<sup>F37</sup>OFCOM] that he does not intend to provide the service in question, or
  - [<sup>F37</sup>OFCOM] for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force.
- (2) Subsection (3) shall not apply in the case of any person by virtue of paragraph (b) of subsection (1) unless [<sup>F37</sup>OFCOM] 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 this subsection applies—
- [<sup>F37</sup>OFCOM] shall serve on the person to whom the licence has been granted a notice revoking the licence as from the time the notice is served on him, and
  - section 8 shall (subject to subsection (4)) have effect as if he had not made an application for the licence.
- (4) Section 8 shall not have effect as mentioned in subsection (3) if the Commission decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.
- (5) Where [<sup>F37</sup>OFCOM] revoke a multiplex 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 specified financial penalty <sup>F38</sup>...
- [<sup>F39</sup>(5A) The maximum amount which a person may be required to pay by way of a penalty under subsection (5) is the maximum penalty given by subsections (5B) and (5C).
- (5B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
- £500,000; and
  - 7 per cent. of the amount which OFCOM estimate would have been the multiplex revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

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- (5C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
  - (b) 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.
- (5D) Section 14 applies for estimating or determining multiplex revenue for the purposes of subsection (5B) or (5C) above.]
- (7) Any financial penalty payable by any body by virtue of subsection (5) shall, in addition to being recoverable from that body as provided by section 38(4), be recoverable by [F37OFCOM] as a debt due to them from any person who controls that body.

#### Textual Amendments

- F37** Words in s. 11 substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 83** (with **Sch. 18**); **S.I. 2003/3142, art. 3(1), Sch. 1** (with art. 11)
- F38** Words in s. 11(5) repealed (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 11(1)(3), Sch. 19(1)** (with **Sch. 18**); **S.I. 2003/3142, art. 3(1), Sch. 1** (with art. 11)
- F39** S. 11(5A)-(5D) substituted for s. 11(6) (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 11(2)(3)** (with **Sch. 18**); **S.I. 2003/3142, art. 3(1), Sch. 1** (with art. 11)

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

- C13** S. 11 applied (with modifications)(20.11.1996) by **S.I. 1996/2760, art. 5(1)(2)(4)**

## 12 Conditions attached to multiplex licence.

- (1) A multiplex licence shall include such conditions as appear to [F40OFCOM] to be appropriate for securing—
- (a) that the licensed service is established by the licence holder in accordance with the timetable and other proposals indicated in the technical plan submitted under section 7(4)(b),
  - (b) the implementation of any proposals submitted by the licence holder under section 7(4)(c), (d), (e) or (f),
  - (c) that all digital programme services broadcast under the licence are provided by the holder of a licence under section 18 [F41, by the BBC][F42 or by an EEA broadcaster],
  - (d) that all digital additional services broadcast under the licence are provided by the holder of a licence under section 25 [F43, by the BBC][F44 or by an EEA broadcaster],
  - [F45](da) that the only digital sound programme services broadcast under the licence are services provided by the holder of a national digital sound programme licence (within the meaning of section 60) or by the BBC;]
  - (e) that in the terms on which the licence holder contracts, or offers to contract, for the broadcasting of digital programme services [F46, digital sound programme services] or digital additional services, he does not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons,
  - (f) that the licence holder does not, in any agreement with a person providing a digital programme service [F47, a digital sound programme service] or digital additional services which entitles that person to use a specified amount of

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digital capacity on the frequency or frequencies to which the licence relates, restrict that person's freedom to make arrangements with some other person as to the use of any of that digital capacity (except to the extent that the restriction is reasonably required for the purpose of ensuring the technical quality of the broadcasts or for the purpose of securing compliance with any other condition of the licence),

- (g) that the signals carrying the multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area for which the service is provided as is for the time being reasonably practicable, and
- <sup>F48</sup>(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).]

<sup>F49</sup>(1A) The services falling within this subsection are—

- (a) qualifying services;
- (b) digital programme services licensed under this Part or provided by the BBC;
- (c) digital sound programme services provided by the BBC;
- (d) programme-related services; and
- (e) relevant technical services.]

(2) Any conditions imposed in pursuance of subsection (1)(a) or (b) may be varied by <sup>F40</sup>[OFCOM] with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).

(3) Where the licence holder applies to <sup>F40</sup>[OFCOM] for the variation of any condition imposed in pursuance of subsection (1)(b) and relating to the characteristics of any of the digital programme services <sup>F50</sup>[or digital sound programme services] to be broadcast under the licence, <sup>F40</sup>[OFCOM] shall vary the condition accordingly unless it appears to them that, if the application were granted, the capacity of the <sup>F51</sup>[so much of what is broadcast under the licence as consists of digital programme services, or of such services together with digital sound programme services.] to appeal to a variety of tastes and interests would be unacceptably diminished.

<sup>F52</sup>(3A) In subsection (1)(c) and (d) “EEA broadcaster” means a person who for the purposes of <sup>F53</sup>[the Audiovisual Media Services Directive] is under the jurisdiction of an EEA State other than the United Kingdom.]

(4) In subsection <sup>F54</sup>[1A)] —

- (a) “qualifying service” does not include <sup>F55</sup>[the digital public teletext service] ,
- (b) “programme-related service” means any digital additional service consisting in the provision of services (apart from advertising) which—
  - (i) are ancillary to the programmes included in one or more television programme services (within the meaning of Part I of the 1990 Act) <sup>F56</sup>[ , or in one or more digital sound programme services provided by the BBC,] and are directly related to the contents of those programmes, or
  - (ii) relate to the promotion or listing of such programmes, and
- (c) “relevant technical service” means any technical service which relates to one or more <sup>F57</sup>[services falling within subsection (1A) which are comprised in the multiplex in question] .

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- [<sup>F58</sup>(4A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 90 per cent. as OFCOM—
- (a) consider appropriate; and
  - (b) specify in the condition.]
- (5) The Secretary of State may by order amend subsection [<sup>F59</sup>(4A)] by substituting for the percentage for the time being specified there a different percentage specified in the order.
- (6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

<sup>F60</sup>(7) . . . . .

#### Textual Amendments

- F40** Word in s. 12 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 84](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F41** Words in s. 12(1)(c) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F42** Words in s. 12(1)(c) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(2\)](#)
- F43** Words in s. 12(1)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(b\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F44** Words in s. 12(1)(d) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(3\)](#)
- F45** S. 12(1)(da) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(c\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F46** Words in s. 12(1)(e) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(d\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F47** Words in s. 12(1)(f) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(e\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F48** S. 12(1)(h) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(f\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F49** S. 12(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F50** Words in s. 12(3) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(3\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F51** Words in s. 12(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(3\)\(b\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F52** S. 12(3A) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(4\)](#)
- F53** Words in s. 12(3A) substituted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\), regs. 1, 4\(2\)](#)
- F54** Words in s. 12(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F55** Words in s. 12(4)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(b\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F56** Words in s. 12(4)(b)(i) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(c\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F57** Words in s. 12(4)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(d\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F58** S. 12(4A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F59** Word in s. 12(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(6\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)



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**F60** S. 12(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)**

**C14** S. 12 applied (with modifications)(20.11.1996) by [S.I. 1996/2760, art. 5\(1\)\(3\)\(4\)](#)

**C15** S. 12 applied (with modifications) (2.7.2008) by [The Television Multiplex Services \(Reservation of Digital Capacity\) Order 2008 \(S.I. 2008/1420\), arts. 1, 11](#)

### 13 Additional payments to be made in respect of multiplex licences.

- (1) Where a multiplex licence is granted in pursuance of a notice under subsection (1) of section 7 which specified a percentage of multiplex revenue under paragraph (f) of that subsection, the licence shall include conditions requiring the licence holder to pay to <sup>F61</sup>[OF COM] (in addition to any fees required to be so paid by virtue of section 4(1)(b)) in respect of each accounting period of his falling within the period for which the licence is in force, an amount representing such percentage of the multiplex revenue for that accounting period (determined under section 14) as was specified in the notice.
- (2) The Secretary of State may by order provide that, in relation to any notice under subsection (1) of section 7 published while the order is in force, no percentage shall be specified under paragraph (f) of that subsection.
- (3) Any order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A multiplex licence may include conditions—
  - (a) enabling <sup>F61</sup>[OF COM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1), and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may in particular include conditions—
  - (a) authorising <sup>F61</sup>[OF COM] 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.
- (6) Where—
  - (a) the first complete accounting period of the licence holder falling within the period for which the licence is in force (“the licence period”) does not begin at the same time as that period, or
  - (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) 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.

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#### Textual Amendments

**F61** Words in s. 13 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 85](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

**C16** S. 13(1) applied (with modifications)(20.11.1996) by [S.I. 1996/2760, art. 5\(1\)\(4\)\(5\)](#)

**C17** S. 13(2)(3) excluded (20.11.1996) by [S.I. 1996/2760, art. 5\(6\)](#)

**C18** S. 13(4)-(6) applied (*prosp.*) by [1990 c. 42, s. 26\(9A\)](#) (as inserted by [1996 c. 55, s. 82\(3\)](#) (with [s. 43\(1\)\(6\)](#)))

## 14 Multiplex revenue.

- (1) For the purposes of [<sup>F62</sup>this Part] the multiplex revenue for each accounting period of [<sup>F63</sup>the person who is the multiplex provider in relation to any television multiplex service or any general multiplex service] shall consist of—
- (a) all payments received or to be received by him or any person connected with him from a person other than a programme provider or an additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital programme service or digital additional service broadcast by means of [<sup>F64</sup>the relevant multiplex] , of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service or digital additional service,
  - (b) all payments received or to be received by him or any person connected with him in respect of the broadcasting of [<sup>F65</sup>by means of the multiplex service of any service which is a qualifying service or which (without being a qualifying service) is provided by the BBC] ,
  - (c) all payments received or to be received by any programme provider or any person connected with him from a person other than [<sup>F66</sup>the multiplex provider] , an additional services provider or another programme provider—
    - (i) in consideration of the inclusion in that period, in any digital programme service provided by him for broadcasting by means of [<sup>F66</sup>the relevant multiplex] , of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service, and
  - (d) all payments received or to be received by any additional services provider or any person connected with him from a person other than [<sup>F66</sup>the multiplex provider] , a programme provider or another additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital additional service provided by him for broadcasting by means of [<sup>F66</sup>the relevant multiplex] , of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital additional service.

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- (2) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (1)(a)(i), any payments are made to [F67the multiplex provider] or any connected person to meet any payments payable by [F67the multiplex provider] by virtue of section 13(1), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (3) In the case of an advertisement included as mentioned in subsection (1)(a)(i), (c)(i) or (d)(i) under arrangements made between—
  - (a) [F67the multiplex provider] , a programme provider or an additional services provider or any person connected with any of them, and
  - (b) a person acting as an advertising agent,  
the amount of any receipt by [F67the multiplex provider] , programme provider or additional services provider 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 (4), be the amount of the payment by the advertiser after the deduction of the commission.
- (4) If the amount deducted by way of commission as mentioned in subsection (3) 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.
- (5) If, in any accounting period of [F67the multiplex provider] , a programme provider or an additional services provider or a person connected with any of them derives, in relation to any programme to be included in the relevant service, any financial benefit (whether direct or indirect) from payments made by any person other than [F67the multiplex provider] , by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the relevant payments shall be taken to include the amount of the financial benefit so derived by [F67the multiplex provider] or the connected person, as the case may be.
- (6) In subsection (5)—
  - (a) “the relevant service” means—
    - (i) in relation to a programme provider or a person connected with him, any digital programme service provided as mentioned in subsection (1)(c)(i), and
    - (ii) in relation to an additional services provider or a person connected with him, any digital additional service provided as mentioned in subsection (1)(d)(i), and
  - (b) “relevant payments” means—
    - (i) in relation to a programme provider, the payments referred to in subsection (1)(c), and
    - (ii) in relation to an additional services provider, the payments referred to in subsection (1)(d).
- (7) Where, in any accounting period of [F67the multiplex provider] —
  - (a) [F67the multiplex provider] provides a digital programme service or digital additional service for broadcasting by means of the multiplex service,
  - (b) [F67the multiplex provider] is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(a) being made to [F67the multiplex provider] ,

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- (c) a programme provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(c) being made to the programme provider, or
- (d) an additional services provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(d) being made to the additional services provider,

[<sup>F68</sup>OFCOM] may, if they consider that the amount which would (apart from this subsection) be the multiplex revenue for that accounting period is less than it would have been if the digital programme service or digital additional service had been provided, or the activity engaged in, by another person at arm's length, treat the multiplex revenue as increased by the amount of the difference.

- (8) Where, in any accounting period of the holder of the multiplex licence, [<sup>F67</sup>the multiplex provider] or a programme provider or additional services provider receives payments falling within subsection (1)(a), (b), (c) or (d) from a person connected with him and it appears to [<sup>F68</sup>OFCOM] that the amount which (apart from this subsection) would be the multiplex revenue for that accounting period is less than it would have been if the arrangements between him and the connected person were such as might be expected between parties at arm's length, [<sup>F68</sup>OFCOM] may treat the multiplex revenue as increased by the amount of the difference.

- (9) In this section—

“additional services provider”, in relation to [<sup>F69</sup>a television multiplex service or a general multiplex service] , means any person who provides any digital additional service for broadcasting by means of [<sup>F70</sup>that multiplex service] ;

“[<sup>F71</sup>multiplex provider”— ”

in relation to a television multiplex service for which a person holds a licence under this Part, means the licence holder; and

in relation to a television multiplex service which is not licensed under this Part or a general multiplex service, means the person who provides that service;]

“programme provider”, in relation to [<sup>F69</sup>a television multiplex service or a general multiplex service] , means any person who provides a digital programme service for broadcasting by means of [<sup>F70</sup>that multiplex service] .

“[<sup>F72</sup>the relevant multiplex - ”

in relation to a multiplex provider falling within paragraph (a) of the definition of that expression, means the television multiplex service to which his licence relates; and

in relation to any other multiplex provider, means the television multiplex service or general multiplex service which is provided by him;

and this section and section 15 shall have effect as if references in this section to digital programme services included references to digital sound programme services and references to digital additional services included references to digital additional services within the meaning of Part 2.]

#### Textual Amendments

- F62** Words in s. 14(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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- F63** Words in s. 14(1) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(2)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F64** Words in s. 14(1)(a) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(2)(c)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F65** Words in s. 14(1)(b) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(2)(d)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F66** Words in s. 14(1)(c)(d) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(2)(e)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F67** Words in s. 14(2)-(8) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(3)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F68** Words in s. 14(2)-(8) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(3)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F69** Words in s. 14(9) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(4)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F70** Words in s. 14(9) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(4)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F71** Words in s. 14(9) inserted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(4)(c)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F72** Words in s. 14(9) inserted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 86(4)(d)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## 15 Attribution of multiplex revenue to licence holder and others.

- (1) For the purposes of section [F73 17(2A) and (2B)] , the share of multiplex revenue attributable to [F74 the person who is the multiplex provider in relation to any television multiplex service] in respect of any accounting period of his shall be—
- (a) the aggregate of—
- (i) payments falling within paragraphs (a) or (b) of section 14(1), and
- (ii) payments received or to be received by him from programme providers and additional services providers in respect of the provision [F75: in that period of television multiplex services,]
- less
- (b) the amount of any payments made or to be made to programme providers or additional service providers which would fall within paragraph (c) or (d) of section 14(1) but for the fact that they are received from [F76 the multiplex provider] .
- (2) For the purposes of [F77 sections 23(2A) to (5) and 27(2A) to (5)] , the share of multiplex revenue attributable to a programme provider or additional services provider in relation to [F78 a television multiplex service or a general multiplex service] in respect of any accounting period of [F79 the multiplex provider] shall be—
- (a) the aggregate of—
- (i) payments falling within paragraph (c) or (d) of section 14(1), and
- (ii) payments received or to be received from the holder of the multiplex licence which would fall within one of those paragraphs but for the fact that they are received from the holder of the multiplex licence,
- less
- (b) the amount of any payments made or to be made to the holder of the multiplex licence in respect of the provision of multiplex services in that period.

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- (3) In a case falling within subsection (7) or (8) of section 14, [F80OFCOM] may treat the share of multiplex revenue attributable to any person for the accounting period of [F81the multiplex provider] as increased by such amount as they consider appropriate to take account of the circumstances mentioned in that subsection.
- (4) In this section “additional services provider” [F82, ‘multiplex provider’] and “programme provider”, in relation to [F83a television multiplex service or a general multiplex service] , have the same meaning as in section 14.

#### Textual Amendments

- F73** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 12\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F74** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F75** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F76** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F77** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 12\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F78** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F79** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F80** Words in s. 15(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F81** Words in s. 15(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F82** Words in s. 15(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(5\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F83** Words in s. 15(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## 16 Duration and renewal of multiplex licences.

- (1) A multiplex licence shall (subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 17(6)) continue in force for a period of twelve years.
- (2) A multiplex licence granted within six years of the commencement of this section may be renewed on one occasion in accordance with this section for a period of twelve years beginning with the date on which it would otherwise expire.
- (3) An application for the renewal of a multiplex licence under subsection (2) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than [F84the day falling three months before] the relevant date.
- (4) At any time before determining the application, [F85OFCOM] may—
- (a) require the applicant to furnish—
    - (i) a technical plan which supplements that submitted by the licence holder under section 7(4)(b), and

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- (ii) proposals which supplement any proposals submitted by the licence holder under section 7(4)(f), and
  - (b) notify the applicant of requirements which must be met by that supplementary technical plan or those supplementary proposals and relate to the matters referred to in section 7(4)(b)(i) and (ii) and (f).
- (5) The consent of the Secretary of State shall be required for any exercise by [F85OFCOM] of their powers under subsection (4) and for any decision by [F85OFCOM] not to exercise those powers; and in deciding whether to give his consent the Secretary of State shall have regard to any report made to him under subsection (1)(b) of section 33 and to any representations received by him on consultation under subsection (4) of that section.
- (6) <sup>F86</sup>... before the relevant date, [F85OFCOM] may postpone consideration of it by them for as long as they think appropriate having regard to subsection (10).
- (7) Where an application for the renewal of a multiplex licence has been duly made to [F85OFCOM] they may refuse the application only if—
  - (a) it appears to them that the applicant has failed to comply with any of the conditions included in his licence,
  - (b) any supplementary technical plan or supplementary proposals submitted under subsection (4)(a) fail to meet requirements notified to the applicant under subsection (4)(b), or
  - (c) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied with the conditions to be included in the licence as renewed.
- (8) Subject to subsection (9), on the grant of any such application [F85OFCOM] may with the consent of the Secretary of State, and shall if so required by him—
  - (a) specify a percentage different from that specified under section 7(1)(f) as the percentage of multiplex revenue for each accounting period of his that will be payable by the applicant in pursuance of section 13(1) during the period for which the licence is to be renewed, or
  - (b) specify such a percentage where none was specified under section 7(1)(f);and [F85OFCOM] may specify under paragraph (a) or (b) either of the things mentioned in section 7(2)(b).
- (9) Where an order under section 13(2) is in force on the relevant date, no percentage of multiplex revenue shall be payable as mentioned in subsection (8)(a) during the period for which the licence is to be renewed.
- (10) Where [F85OFCOM] have granted a person's application under this section, they shall formally renew his licence from the date on which it would otherwise expire; and they shall not so renew his licence unless they have notified him of any percentage specified by them under subsection (8) and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (11) Where a multiplex licence has been renewed under this section, the licence as renewed shall include such further conditions as appear to [F85OFCOM] to be appropriate for securing the implementation of any supplementary technical plan and supplementary proposals submitted under subsection (4)(a).

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(12) In this section “the relevant date”, in relation to a multiplex licence, means the date which [F85OFCOM] determine to be that by which they would need to publish a notice under section 7(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the service formerly provided under that licence.

[F87(12A) A determination for the purposes of subsection (12)—

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.]

(13) Nothing in this section prevents the holder of a multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 7(1).

#### Textual Amendments

- F84** Words in s. 16(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 88(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F85** Words in s. 16 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 88(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F86** Words in s. 16(6) 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)
- F87** S. 16(12A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 88(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C19** S. 16 applied (with modifications)(20.11.1996) by S.I. 1996/2760, **art. 5(1)(4)(7)**
- C20** S. 16(3) modified (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 18 para. 50(3)-(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## 17 Enforcement of multiplex licences.

(1) If [F88OFCOM] are satisfied that the holder of a multiplex licence has failed to comply with any condition of the licence or with any direction given by [F88OFCOM] 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 [F88OFCOM], or
- (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.

(2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed [F89the maximum penalty given by subsection (2A).]

[F90(2A) The maximum penalty is whichever is the greater of—

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

(2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to



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be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.

- (2C) Section 15(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above.]
- (4) [<sup>F88</sup>OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) 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), [<sup>F88</sup>OFCOM] 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) Section 42 of the 1990 Act (power to revoke Channel 3 or 5 licence) shall have effect in relation to a multiplex licence as it has effect in relation to a Channel 3 licence, but as if the reference in subsection (1)(a) of that section to Part I of the 1990 Act were a reference to this Part.

#### Textual Amendments

- F88** Words in s. 17 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 89](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F89** Words in s. 17(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 13\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F90** S. 17(2A)-(2C) substituted for s. 17(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 13\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C21** S. 17(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. 4\(a\)](#) (with art. 5)

### *Digital programme services*

#### **18 Licensing of digital programme services.**

- (1) An application for a licence to provide digital programme services (in this Part referred to as a “digital programme licence”) shall—
- be made in such manner as [<sup>F91</sup>OFCOM] may determine, and
  - be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, [<sup>F91</sup>OFCOM] may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to [<sup>F91</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.

*Status: Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.  
 Changes to legislation: Broadcasting Act 1996 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Where an application for a digital programme licence is made to [F91OFCOM] in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).

F92(5) .....

F92(6) .....

**Textual Amendments**

F91 Words in s. 18(1)-(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 90\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

F92 S. 18(5)(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 90\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

C22 S. 18 modified (2.7.2008) by [The Television Multiplex Services \(Reservation of Digital Capacity\) Order 2008 \(S.I. 2008/1420\), arts. 1, 6](#)

**19 Duration and conditions of digital programme licence.**

(1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 23(8), a digital programme licence shall continue in force until it is surrendered by its holder.

F93(2) .....

(3) A digital programme licence shall also include such conditions as appear to [F94OFCOM] to be appropriate for requiring the holder of the licence—

(a) on entering into any agreement with [F95the provider of a television multiplex service or general multiplex service] for the provision of a digital programme service to be broadcast [F96by means of that provider’s service] , to notify [F94OFCOM] —

(i) of [F97the identity of the service by means of which it will be broadcast] ,

(ii) of the characteristics of the digital programme service to which the agreement relates,

(iii) of the period during which it will be provided, and

(iv) where under the agreement the holder of the digital programme licence will be entitled to the use of a specified amount of digital capacity, of that amount,

(b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii), (iii) or (iv), to notify [F94OFCOM] of the variation so far as relating to those matters, and

(c) where he is providing a digital programme service to [F98the provider of a television multiplex service or general multiplex service] in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify [F94OFCOM] of that fact.

F99(4) .....

F99(5) .....

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- F<sup>99</sup>(6) .....
- F<sup>99</sup>(7) .....
- F<sup>99</sup>(8) .....
- F<sup>99</sup>(9) .....
- F<sup>99</sup>(10) .....

**Textual Amendments**

- F93** S. 19(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 15 para. 91(3), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F94** Words in s. 19(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F95** Words in s. 19(3)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F96** Words in s. 19(3)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(c\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F97** Words in s. 19(3)(a)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(d\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F98** Words in s. 19(3)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F99** S. 19(4)-(10) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 15 para. 91(3), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C23** S. 19 modified (2.7.2008) by [The Television Multiplex Services \(Reservation of Digital Capacity\) Order 2008 \(S.I. 2008/1420\)](#), arts. 1, 7

**F<sup>100</sup>20 Code relating to provision for deaf and visually impaired.**

**Textual Amendments**

- F100** Ss. 20-22 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)

**F<sup>100</sup>21 Powers of Secretary of State in relation to code under section 20.**

**Textual Amendments**

- F100** Ss. 20-22 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)

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## <sup>F100</sup>22 Compliance with code under section 20.

.....

### Textual Amendments

**F100** Ss. 20-22 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)

## 23 Enforcement of digital programme licences.

- (1) If [<sup>F101</sup>OFCOM] are satisfied that the holder of a digital programme licence has failed to comply with any condition of the licence or with any direction given by [<sup>F101</sup>OFCOM] 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 [<sup>F101</sup>OFCOM], or
  - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed [<sup>F102</sup>the maximum penalty given by subsection (2A).]
- <sup>F103</sup>(2A) The maximum penalty is whichever is the greater of—
  - (a) £250,000; and
  - (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.]
- (4) In [<sup>F104</sup>subsection (2A)] “relevant accounting period”, in relation to a [<sup>F105</sup>television multiplex service or general multiplex service, means the last accounting period of the multiplex provider] .
- (5) Where, in the case of any [<sup>F106</sup>television multiplex service or general multiplex service, the first accounting period of the multiplex provider] throughout which the holder of the digital programme licence provides a digital programme service for broadcasting by means of the multiplex service (“the first period”) has [<sup>F107</sup>not ended when the penalty is imposed, then for the purposes of this section] the share of multiplex revenue attributable to the holder of the digital programme licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which [<sup>F101</sup>OFCOM] estimate to be the share of multiplex revenue attributable to him for the first period.
- <sup>F108</sup>(5A) In subsections (4) and (5) “multiplex provider” has the same meaning as in section 14.]
- <sup>F109</sup>(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.]
- (6) [<sup>F101</sup>OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

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- (7) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [<sup>F101</sup>OFCOM] 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.
- (8) Subject to subsection (9), section 40(1) to (4) (power to direct licensee to broadcast correction or [<sup>F110</sup>statement of findings] or not to repeat programme) and section 42 (power to revoke Channel 3 or 5 licence) of the 1990 Act shall apply in relation to a digital programme licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital programme licence, section 42 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by [<sup>F101</sup>OFCOM] of their powers under subsection (1) in respect of any failure to comply with any condition of a digital programme licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

#### Textual Amendments

- F101** Words in s. 23 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F102** Words in s. 23(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(1\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F103** S. 23(2A) substituted for s. 23(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(2\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F104** Words in s. 23(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(3\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F105** Words in s. 23(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F106** Words in s. 23(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F107** Words in s. 23(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(4\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F108** S. 23(5A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F109** S. 23(5B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(5\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F110** Words in s. 23(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C24** S. 23(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. 4\(b\)](#) (with art. 5)

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*Digital additional services provided on television broadcasting frequencies*

**24 Digital additional services.**

- (1) In this Part “digital additional service” means any service which—
- [<sup>F111</sup>(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;
  - (b) is so provided with a view either—
    - (i) to the broadcasting being by means of a television multiplex service or by means of a general multiplex service; or
    - (ii) to the members of the public in question being or including members of the public in an EEA State other than the United Kingdom, or in an area of such a State;
  - and
  - (c) is not a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital programme service, a digital sound programme service, an ancillary service or a technical service.]
- (2) In this Part “ancillary service” means any service which is provided by the holder of a digital programme licence or by an [<sup>F112</sup>a relevant public service broadcaster] and consists in the provision of—
- [<sup>F113</sup>(a) assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by him;
  - (b) a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided; or
  - (c) any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents.]
- (3) In this Part “technical service” means a service which—
- (a) is provided for technical purposes connected with the encryption or decryption of one or more digital programme services [<sup>F114</sup>, digital sound programme services] or digital additional services, and
  - (b) is of a description specified in an order made by the Secretary of State.
- [<sup>F115</sup>(3A) In this section—
- “assistance for disabled people” has the same meaning as in Part 3 of the Communications Act 2003;
- “available for reception by members of the public” shall be construed in accordance with section 361 of that Act;
- “public television service of the Welsh Authority” means—
- (a) S4C Digital; or
  - (b) any television programme service the provision of which by the Authority is authorised by or under section 205 of that Act and which is provided in digital form;
- “relevant public service broadcaster” means any of the following—
- (a) a person licensed under Part 1 of the 1990 Act to provide a Channel 3 service;

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- (b) the Channel 4 Corporation;
  - (c) a person licensed under Part 1 of the 1990 Act to provide Channel 5;
  - (d) the BBC;
  - (e) the Welsh Authority;
  - (f) the public teletext provider.]
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F111** S. 24(1)(a)-(c) substituted for s. 24(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 93\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F112** Words in s. 24(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 93\(3\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F113** S. 24(2)(a)-(c) substituted for s. 24(2)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 93\(3\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F114** Words in s. 24(3)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 93\(4\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F115** S. 24(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 93\(5\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

#### [<sup>F116</sup>24A Duty to prevent access to seriously harmful extrinsic material

- (1) In carrying out their functions, OFCOM must do all that they consider appropriate to prevent digital additional services from enabling members of the public to access seriously harmful extrinsic material.
- (2) “Seriously harmful extrinsic material”, in relation to a digital additional service, means material that—
- (a) is not included in the service, and
  - (b) appears to OFCOM—
    - (i) to have the potential to cause serious harm, or
    - (ii) to be likely to encourage or incite the commission of crime or lead to disorder.]

#### Textual Amendments

- F116** S. 24A inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), [ss. 92, 118\(6\)](#); S.I. 2017/765, reg. 2(x)

## 25 Licensing of digital additional services.

- (1) An application for a licence to provide digital additional services (in this Part referred to as a “digital additional services licence”) shall—
- (a) be made in such manner as [<sup>F117</sup>OFCOM] may determine, and
  - (b) be accompanied by such fee (if any) as they may determine.

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- (2) At any time after receiving such an application and before determining it, [F117OFCOM] may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to [F117OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital additional services licence is made to [F117OFCOM] in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).
- [F118(4A) A digital additional services licence is not required for a service that is or is comprised in a qualifying service.]
- F119(5) .....
- F120(6) .....

#### Textual Amendments

- F117** Words in s. 25(1)-(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F118** S. 25(4A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F119** S. 25(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F120** S. 25(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## 26 Duration and conditions of digital additional services licence.

- (1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 27(8), a digital additional services licence shall continue in force until it is surrendered by its holder.
- (2) A digital additional services licence shall include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence—
- (a) on entering into any agreement with [F121the provider of a television multiplex service or general multiplex service] for the broadcasting of digital additional services [F122by means of that provider's service] , to notify [F123OFCOM] —
    - (i) of [F124the identity of the service by means of which it will be broadcast] ,
    - (ii) of the period during which the services will be provided,
    - (iii) where under the agreement the holder of the digital additional services licence will be entitled to the use of a specified amount of digital capacity, of that amount,
  - (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify [F123OFCOM] of the variation so far as relating to those matters, and
  - (c) where he is providing digital additional services to [F125the provider of a television multiplex service or general multiplex service] in accordance with



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such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify [<sup>F123</sup>OFCOM] of that fact.

#### Textual Amendments

- F121** Words in s. 26(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F122** Words in s. 26(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F123** Words in s. 26(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F124** Words in s. 26(2)(a)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F125** Words in s. 26(2)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## 27 Enforcement of digital additional services licences.

- (1) If [<sup>F126</sup>OFCOM] are satisfied that the holder of a digital additional services licence has failed to comply with any condition of the licence or with any direction given by [<sup>F126</sup>OFCOM] under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
- a notice requiring him to pay, within a specified period, a specified financial penalty to [<sup>F126</sup>OFCOM], or
  - a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed [<sup>F127</sup>the maximum penalty given by subsection (2A).]

[<sup>F128</sup>(2A) The maximum penalty is whichever is the greater of—

- £250,000; and
- 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.]

(4) In [<sup>F129</sup>subsection (2A)] “relevant accounting period”, in relation to a [<sup>F130</sup>television multiplex service or general multiplex service, means the last accounting period of the multiplex provider].

(5) Where, in the case of any [<sup>F131</sup>television multiplex service or general multiplex service, the first accounting period of the multiplex provider] throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting by means of the multiplex service (“the first period”) has [<sup>F132</sup>not ended when the penalty is imposed, then for the purposes of this section] the share of multiplex revenue attributable to the holder of the digital additional services licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which [<sup>F126</sup>OFCOM] estimate to be the share of multiplex revenue attributable to him for the first period.

[<sup>F133</sup>(5A) In subsections (4) and (5) “multiplex provider” has the same meaning as in section 14.]

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*Changes to legislation: Broadcasting Act 1996 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F134</sup>(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.]
- (6) [<sup>F126</sup>OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [<sup>F126</sup>OFCOM] 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.
- (8) Subject to subsection (9), sections 40(1) to (4) and section 42 of the 1990 Act shall apply in relation to a digital additional services licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital additional services licence, section 42 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by [<sup>F126</sup>OFCOM] of their powers under subsection (1) in respect of any failure to comply with any condition of a digital additional services licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

#### Textual Amendments

- F126** Words in s. 27 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F127** Words in s. 27(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(1\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F128** S. 27(2A) substituted for s. 27(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(2\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F129** Words in s. 27(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(3\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F130** Words in s. 27(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F131** Words in s. 27(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F132** Words in s. 27(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(4\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F133** S. 27(5A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F134** S. 27(5B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(5\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C25** S. 27(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. 4(c)** (with art. 5)

*Digital broadcasting of services provided by independent analogue broadcasters*

**<sup>F135</sup>28 Provision for broadcasting of services provided by independent analogue broadcasters.**

.....

**Textual Amendments**

- F135** S. 28 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18 para. 47](#)); [S.I. 2003/3142](#), art. 3(1), **Sch. 1** (with art. 11)

**29 The S4C digital service.**

- <sup>F136</sup>(1)** .....
- (2) Sections 57(4), 58(5), **<sup>F137</sup>...** 60 and 64 of the 1990 Act shall apply in relation to S4C Digital as they apply in relation to S4C.
- <sup>F138</sup>(3)** .....
- <sup>F138</sup>(4)** .....

**Textual Amendments**

- F136** S. 29(1) omitted (12.8.2009) by virtue of [The Welsh Authority \(Digital Switchover\) Order 2009 \(S.I. 2009/1968\)](#), arts. 1, 3
- F137** Word in s. 29(2) 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)
- F138** S. 29(3)(4) omitted (12.8.2009) by virtue of [The Welsh Authority \(Digital Switchover\) Order 2009 \(S.I. 2009/1968\)](#), arts. 1, 3

**<sup>F139</sup>30 The qualifying teletext service.**

.....

**Textual Amendments**

- F139** S. 30 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)

**<sup>F140</sup>31 Advertisements included in qualifying services.**

.....

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### Textual Amendments

**F140** S. 31 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)

### *Miscellaneous and supplemental*

## 32 Digital broadcasting of Gaelic programmes.

- (1) The Secretary of State may by order provide for <sup>F141</sup>[OFCOM to include in no more than one relevant multiplex licence] such conditions relating to the broadcasting of programmes in Gaelic for reception wholly or mainly in Scotland as may be specified in, or determined by them under, the order.
- (2) The Secretary of State may by order require the holder of a multiplex licence (“the holder”), in complying with any such conditions, to broadcast programmes in Gaelic supplied by each of the persons mentioned in subsection (4) (“the suppliers”) amounting to such minimum number of hours (if any) of transmission time per year as may be specified in the order in relation to that supplier.
- (3) For the purpose of enabling the holder to comply with any such conditions and any obligation imposed by virtue of subsection (2), it shall be the duty of each supplier to provide the holder, free of charge, with such programmes in Gaelic which have been broadcast by the supplier as the holder may request.
- (4) The suppliers are—
  - (a) the BBC,
  - (b) the Channel Four Television Corporation,
  - (c) any holder of a Channel 3 licence to provide a regional Channel 3 service (within the meaning of Part I of the 1990 Act) for reception wholly in Scotland, and
  - (d) such other persons providing television broadcasting services as may be specified by order by the Secretary of State.
- (5) Subsection (3) shall not apply in relation to any programme first broadcast by the supplier concerned—
  - (a) before 1st January 1993, or
  - (b) in the period beginning on 1st January 1993 and ending on 31st March 1997, if the supplier has no right to broadcast it again or has such a right but is not entitled to transfer it to the holder.
- (6) The holder may broadcast any programme supplied by virtue of subsection (3) on one occasion only.
- (7) The holder shall consult <sup>F142</sup>[Seirbheis nam Meadhanan Gàidhlig] and the suppliers about—
  - (a) the quantity of programmes likely to be requested by the holder from each supplier by virtue of subsection (3), and
  - (b) the schedules proposed for the broadcast by the holder of programmes supplied by virtue of that subsection,
 and shall have regard to any comments made as a result of such consultation.

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(8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F143</sup>(9) In this section—

“Gaelic” means the Gaelic language as spoken in Scotland;

“relevant multiplex licence” means a multiplex licence in respect of which the Secretary of State has made an order under section 243(3) of the Communications Act 2003;

“television broadcasting service” has the same meaning as in Part 3 of the Communications Act 2003.]

#### Textual Amendments

**F141** Words in s. 32(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 97\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F142** Words in s. 32(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 97\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F143** S. 32(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 97\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### 33 Review of digital television broadcasting.

(1) For the purpose of considering for how long it would be appropriate for television broadcasting services to continue to be provided in analogue form, the Secretary of State—

(a) shall keep under review the extent of—

- (i) the provision in the United Kingdom of multiplex services,
- (ii) the availability in the United Kingdom in digital form of the [<sup>F144</sup>following services, namely, Channel 3 services, Channel 4, Channel 5, the public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003), the digital public teletext service] , and the television broadcasting services of the BBC, and
- (iii) the ownership or possession in the United Kingdom of equipment capable of receiving the services referred to in sub-paragraph (ii) when broadcast or transmitted in digital form,

and the likely future extent of such provision, such availability and such ownership or possession, and

(b) shall, on or before the fourth anniversary of the day on which the first multiplex licence is granted under section 8, and at such time or times thereafter as he thinks fit, require [<sup>F145</sup>OFCOM] and the BBC to report to him on the matters referred to in paragraph (a).

(2) If [<sup>F145</sup>OFCOM] or the BBC are required to submit a report under subsection (1)(b), they shall submit the report within twelve months of the date of the requirement.

(3) Before making any report under subsection (1)(b), [<sup>F145</sup>OFCOM] shall consult—

(a) the holders of all multiplex licences,

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- (b) the holders of digital programme licences who are providing digital programme services which are being broadcast,
  - (c) such other persons providing services licensed by the Commission under this Part or Part I <sup>F146</sup>... of the 1990 Act as [<sup>F145</sup>OFCOM] think fit, and
  - (d) the Welsh Authority;
- and [<sup>F145</sup>OFCOM] shall include in their report a summary of representations made to them by the persons consulted.
- (4) For the purpose mentioned in subsection (1), the Secretary of State shall, on requiring reports under subsection (1)(b), consult—
- (a) such persons appearing to him to represent viewers as he thinks fit, and
  - (b) such other persons as he thinks fit,
- in connection with the matters referred to in subsection (1)(a) and also, if the Secretary of State thinks fit, as to the likely effects on viewers of any television broadcasting service ceasing to be broadcast in analogue form.
- (5) In this section “television broadcasting service” has the same meaning as in Part I of the 1990 Act.

#### Textual Amendments

- F144** Words in s. 33(1)(a)(ii) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 98\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F145** Words in s. 33 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 98\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F146** Words in s. 33(3)(c) 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)

- C26** S. 33: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 11](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### <sup>F147</sup>34 Promotion of equal opportunities and fair treatment.

.....

#### Textual Amendments

- F147** S. 34 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)

### 35 Enforcement of licences held by BBC companies.

Where [<sup>F148</sup>OFCOM] —

- (a) give a direction to a BBC company under section 40(1) of the 1990 Act as applied by section 23(8) or 27(8),
- (b) serve a notice on a BBC company under any provision of section 17, 23 or 27, or
- (c) receive any representations from a BBC company under section 17(4), 23(6) or 27(6) or under section 42 of the 1990 Act as so applied,

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[<sup>F148</sup>OFCOM] shall send a copy of the direction, notice or representations to the Secretary of State.

**Textual Amendments**

**F148** Word in s. 35 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 99](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**36 Power to vary amount of financial penalties.**

(1) The Secretary of State may by order amend any of the provisions specified in subsection (2) by substituting a different sum for the sum for the time being specified there.

[<sup>F149</sup>(2) The provisions referred to in subsection (1) are—

- (a) section 11(5B)(a) and (5C)(a);
- (b) section 17(2A)(a);
- (c) section 23(2A)(a); and
- (d) section 27(2A)(a).

(3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.]

**Textual Amendments**

**F149** S. 36(2)(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 16](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**37 Computation of multiplex revenue.**

Part I of Schedule 1 (which contains provisions relating to the computation of multiplex revenue for the purposes of this Part) shall have effect.

<sup>F150</sup>**38 Certain receipts of Commission to be paid into Consolidated Fund.**

.....

**Textual Amendments**

**F150** S. 38 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](#))

**39 Interpretation of Part I.**

(1) In this Part—

“ancillary service” has the meaning given by section 24(2);

[<sup>F151</sup>“the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or

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administrative action in Member States concerning the provision of audiovisual media services;]

“a Channel 3 licence” has the same meaning as in Part I of the 1990 Act and “a Channel 3 service” means a regional or national Channel 3 service (within the meaning of that Part);

“Channel 4”, “Channel 5” and “a Channel 5 licence” have the same meaning as in Part I of the 1990 Act;

<sup>F152</sup> ...

“digital additional service” has the meaning given by section 24(1), and “digital additional services licence” means a licence to provide such services;

“digital programme service” has the meaning given by section 1(4), and “digital programme licence” means a licence to provide such services;

[<sup>F153</sup>“ digital public teletext service ” has the same meaning as in Part 3 of the Communications Act 2003;

“digital sound programme service” has the same meaning as in Part 2 of this Act;

[<sup>F154</sup>“EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978;]

“general multiplex service” has the same meaning as in that Part;]

“independent analogue broadcaster” has the meaning given by section 2(1);

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“multiplex service” has the meaning given by section 1(1), and “multiplex licence” means a licence to provide such a service;

[<sup>F155</sup>“public teletext provider” means the person for the time being licensed under Part 1 of the 1990 Act to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);]

“qualifying service” has the meaning given by section 2(2);

<sup>F152</sup> ...

[<sup>F156</sup>“S4C” and “S4C Digital” each has the same meaning as in Part 3 of the Communications Act 2003;]

“technical service” has the meaning given by section 24(3).

[<sup>F157</sup>“television licensable content service” has the meaning given by section 232 of the Communications Act 2003;]

[<sup>F158</sup>“television multiplex service]” has the meaning given by section 241 of the Communications Act 2003.

- (2) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

#### Textual Amendments

**F151** Words in s. 39(1) inserted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\)](#), regs. 1, **4(3)(a)**

**F152** Words in s. 39(1) 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)



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- F153** Words in s. 39(1) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 100(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F154** Words in s. 39(1) inserted (1.10.2013) by The Broadcasting and Communications (Amendment) Regulations 2013 (S.I. 2013/2217), regs. 1, **4(3)(b)**
- F155** Words in s. 39(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 100(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F156** Words in s. 39(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 100(c)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F157** Words in s. 39(1) inserted (25.7.2006) by The Television Licensable Content Services Order 2006 (S.I. 2006/2131), arts. 1(1), **5(2)**
- F158** Words in s. 39(1) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 100(d)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## PART II

### DIGITAL TERRESTRIAL SOUND BROADCASTING

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

- C27** Pt. 2: 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)
- C28** Pt. 2 modified (29.12.2003) by Communications Act 2003 (c. 21), **ss. 258, 411(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C29** Pt. 2 applied (with modifications) (25.10.2019) by The Small-scale Radio Multiplex and Community Digital Radio Order 2019 (S.I. 2019/1387), arts. 1, **6(a)**, Sch. Pts. 1, **3**
- C30** Pt. 2 applied (with modifications) (25.10.2019) by The Small-scale Radio Multiplex and Community Digital Radio Order 2019 (S.I. 2019/1387), arts. 1, **6(b)**, Sch. Pts. 2, **3**

#### Introductory

### 40 Radio multiplex services.

[<sup>F159</sup>(1) In this Part “radio multiplex service” means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003.]

- (4) A radio multiplex service <sup>F160</sup>... may be either—
- provided for a particular area or locality in the United Kingdom (a “local radio multiplex service”), or
  - provided without any restriction by virtue of this Act to a particular area or locality in the United Kingdom (a “national radio multiplex service”).
- (5) In this Part “digital sound programme service” means a service consisting in the provision by any person of programmes consisting wholly of sound (together with any ancillary services, as defined by section 63(2)) with a view to their being broadcast in digital form [<sup>F161</sup>so as to be available for reception by members of the public], whether by him or by some other person, but does not include—
- a simulcast radio service (as defined by section 41(2)), or
  - a service where the sounds are to be received through the use of coded reference to pre-defined phonetic elements of sounds.

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- (6) The Secretary of State may, if having regard to developments in broadcasting technology he considers it appropriate to do so, by order amend the definition of “digital sound programme service” in subsection (5).
- (7) No order under subsection (6) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- [<sup>F162</sup>(8) In this section—
- “available for reception by members of the public” shall be construed in accordance with section 361 of the Communications Act 2003;
- “broadcast” means broadcast otherwise than from a satellite.]

#### Textual Amendments

- F159** S. 40(1) substituted for s. 40(1)-(3) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 101\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F160** Words in s. 40(4) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 101\(3\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F161** Words in s. 40(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 101\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F162** S. 40(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 101\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### 41 Meaning of “independent national broadcaster” and “simulcast radio service”.

- (1) In this Part “independent national broadcaster” means any person who is the holder of a national licence (within the meaning of Part III of the 1990 Act).
- [<sup>F163</sup>(2) In this Part, a “simulcast radio service” means a service provided by a person for broadcasting in digital form and corresponding to a service which is a national service within the meaning of Part 3 of the 1990 Act and is provided by that person.]
- (3) For the purposes of this Part a service provided for broadcasting in digital form corresponds to a national service (within the meaning of Part III of the 1990 Act) if, and only if, in every calendar month—
- (a) at least 80 per cent. of so much of the national service as consists of programmes, consists of programmes which are also included in the digital service in that month, and
  - (b) at least 50 per cent. of so much of the national service as consists of such programmes is broadcast at the same time on both services.
- (4) The Secretary of State may by order amend subsection (3)(a) or (b) by substituting for the percentage for the time being specified there a different percentage specified in the order.
- (5) Before making an order under subsection (4) the Secretary of State shall consult such persons appearing to him to represent listeners as he thinks fit.
- (6) An order under subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In subsection (3) “programme” does not include an advertisement.

*Status: Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.*

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### Textual Amendments

**F163** S. 41(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 256\(1\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

### Commencement Information

**I2** S. 41 wholly in force at 29.1.1998; s. 41 not in force at Royal Assent see s. 149; s. 41 in force for certain purposes at 1.10.1996 by [S.I. 1996/2120, art. 4, Sch. 1](#); s. 41 in force at 29.1.1998 insofar as not already in force by [S.I. 1998/188, art. 3](#)

## General provisions about licences

### 42 Licences under Part II.

(1) Any licence granted by [<sup>F164</sup>OFCOM] under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of this Part.

(2) [<sup>F165</sup>OFCOM] —

- (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 44(1) or (2)(b) or (c).

[<sup>F166</sup>(3) OFCOM may vary a licence by a notice served on the licence holder.

(3A) OFCOM shall not vary—

- (a) the period for which a licence having effect for a specified period is to continue in force, or
- (b) increase the total amount of digital capacity specified in a national radio multiplex licence for the purposes of section 48(1A),

unless the licence holder consents.

(3B) OFCOM shall not make any other variation of a licence unless the licence holder has been given a reasonable opportunity of making representations to OFCOM about the variation.]

(4) [<sup>F167</sup>Paragraph (a) of subsection (3A)] does not affect the operation of section 59(1)(b); and that subsection shall not authorise the variation of any condition included in a licence in pursuance of section 55(1).

(5) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of [<sup>F168</sup>OFCOM] .

(6) Without prejudice to the generality of subsection (5), [<sup>F169</sup>OFCOM] 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.

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- [<sup>F170</sup>(7) The holding of a licence by a person shall not relieve him—
- (a) of any liability in respect of a failure to hold [<sup>F171</sup>a licence under section 8 of the Wireless Telegraphy Act 2006] ; or
  - (b) of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).]

#### Textual Amendments

- F164** Words in s. 42(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 102\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F165** Words in s. 42(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 102\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F166** S. 42(3)-(3B) substituted for s. 42(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 102\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F167** Words in s. 42(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 102\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F168** Words in s. 42(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 102\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F169** Words in s. 42(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 102\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F170** S. 42(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 102\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F171** Words in s. 42(7)(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 18](#)

### 43 General licence conditions.

- (1) A licence may include—
- (a) such conditions as appear to [<sup>F172</sup>OFCOM] to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under [<sup>F173</sup>this Act, the 1990 Act or the Communications Act 2003] ;
  - (b) conditions enabling [<sup>F172</sup>OFCOM] 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 [<sup>F172</sup>OFCOM] (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 [<sup>F172</sup>OFCOM] , 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 [<sup>F174</sup>, the 1990 Act or the Communications Act 2003] ;
  - (e) conditions requiring the licence holder, if found by [<sup>F172</sup>OFCOM] to be in breach of any condition of his licence, to reimburse to [<sup>F172</sup>OFCOM] , 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 [<sup>F172</sup>OFCOM] to be appropriate.

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- (2) A licence may in particular include—
- (a) conditions requiring the licence holder—
- (i) to comply with any direction given by [F172OFCOM] as to such matters as are specified in the licence or are of a description so specified, or
- (ii) (except to the extent that [F172OFCOM] 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, [F172OFCOM] , F175 ...
- F175(ii) . . . . .
- 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 [F172OFCOM] by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by [F172OFCOM] ; F176 ...
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and [F172OFCOM] shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide [F172OFCOM] 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 59, 62 and 66 of this Act and section 111 of the 1990 Act 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).

**Textual Amendments**

- F172** Words in s. 43 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 103\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F173** Words in s. 43(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 103\(3\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F174** Words in s. 43(1)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 103\(3\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F175** S. 43(2)(b)(ii) and word repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 103\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F176** Words in s. 43(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 103\(5\), Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C31** S. 43(1)(d) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), arts. 1, 10\(1\)\(a\)\(2\)](#) (b) (with art. 5)

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#### 44 Restrictions on holding of licences under Part II.

- (1) [F<sup>177</sup>OFCOM] 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 the 1990 Act (as amended by this Act); and
  - [F<sup>178</sup>(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) [F<sup>177</sup>OFCOM] 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;
  - [F<sup>179</sup>(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
    - (i) shareholdings in the body; or
    - (ii) the directors of the body;
  - (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
    - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
    - (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.

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- (3) Where [F177OFCOM] —
- (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,
- 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 [F177OFCOM] 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 [F177OFCOM] 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,
- [F177OFCOM] 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) [F177OFCOM] shall not serve any such notice on the licence holder unless—
- (a) [F177OFCOM] have notified him of the matters [F180constituting their grounds for revoking the licence] and given him a reasonable opportunity of making representations to them about those matters, and
  - (b) in a case where the relevant change is one falling within subsection (7)—
    - (i) they have also given him an opportunity of complying with [F181the requirements imposed by or under Schedule 14 to the Communications Act 2003] within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.
- (7) A relevant change falls within this subsection if it consists only in one or more of the following—
- <sup>F182</sup>(a) .....
  - (b) a change in the national market share (within the meaning of [F183Part 1 of Schedule 14 to the Communications Act 2003] ) of one or more national newspapers (within the meaning of that Part of that Schedule), or
  - (c) a change in the local market share (within the meaning of [F184section 5 of the Broadcasting Act 1990] ) in a particular area of one or more local newspapers (within the meaning of [F185Part 1 of Schedule 14 to the Communications Act 2003] ).
- (8) 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,
  - (b) any change in the persons having control over or interests in the body, or
  - (c) any other change giving rise to [F186a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003.]
- being (in any case) a change which is such that, if it fell to [F177OFCOM] 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.

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### Textual Amendments

- F177** Words in s. 44 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 104\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F178** S. 44(1)(b)(c) substituted for s. 44(1)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 350\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F179** S. 44(2)(da)(db) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 104\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F180** Words in s. 44(6)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 104\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F181** Words in s. 44(6)(b)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 104\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F182** S. 44(7)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 104\(5\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F183** Words in s. 44(7)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 104\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F184** Words in s. 44(7)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 15\(a\)](#)
- F185** Words in s. 44(7)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 15\(b\)](#)
- F186** Words in s. 44(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 104\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### Modifications etc. (not altering text)

- C32** S. 44 modified (temp.) (17.7.2003) by [The Communications Act 2003 \(Commencement No. 1\) Order 2003 \(S.I. 2003/1900\), art. 5](#)

## *Radio multiplex services*

### <sup>F187</sup>45 Assignment of frequencies by Secretary of State.

.....

### Textual Amendments

- F187** S. 45 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)

### 46 National radio multiplex licences.

- (1) Where [<sup>F188</sup>OFCOM] propose to grant a licence to provide a national radio multiplex service, they shall publish, in such manner as they consider appropriate, a notice—
- stating that they propose to grant such a licence,
  - specifying the frequency on which the service is to be provided,
  - specifying, in such manner as [<sup>F188</sup>OFCOM] consider appropriate, the area of the United Kingdom in which the frequency is to be available,
  - where digital capacity on the frequency is reserved in pursuance of [<sup>F189</sup>a condition] under section 48 for the broadcasting of a simulcast radio service,



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- stating that fact and specifying the capacity reserved and the identity of the national service or services concerned,
- <sup>F190</sup>(e) .....
- (f) inviting applications for the licence and specifying the closing date for such applications,
- (g) specifying the fee payable on any application made in pursuance of the notice, and
- (h) stating whether any percentage of multiplex revenue for each accounting period would be payable by an applicant in pursuance of section 55 if he were granted the licence and, if so, specifying that percentage.
- (2) Unless an order under section 55(2) is in force—
- (a) the consent of the Secretary of State shall be required for so much of the notice as relates to the matters specified in subsection (1)(h), and
- (b) [<sup>F188</sup>OFCOM] may if they think fit (with that consent) specify under subsection (1)(h)—
- (i) different percentages in relation to different accounting periods falling within the period for which the licence would be in force, and
- (ii) a nil percentage in relation to any accounting period so falling.
- (3) When publishing a notice under subsection (1), [<sup>F188</sup>OFCOM] —
- (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii) and (f), and
- (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) Any application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(g),
- (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
- (i) the parts of the area specified under subsection (1)(c) which would be within the coverage area of the service,
- (ii) the timetable in accordance with which that coverage would be achieved, and
- (iii) the technical means by which it would be achieved,
- (c) the applicant's proposals as to the number of digital sound programme services to be broadcast and as to the characteristics of each of those services,
- (d) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of those services would begin,
- <sup>F191</sup>(da) the applicant's proposals as to the broadcasting of television licensable content services,]
- (e) the applicant's proposals as to the broadcasting of digital additional services,
- (f) the applicant's proposals for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving the service,
- (g) such information as the Authority may reasonably require 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

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- (h) such other information as [F188OFCOM] may reasonably require for the purpose of considering the application.
- (5) In subsection (4)(f) “acquisition” includes acquisition on hire or loan.
- (6) At any time after receiving such an application and before determining it, [F188OFCOM] may require the applicant to furnish additional information under any of paragraphs (b) to (h) of subsection (4).
- (7) Any information to be furnished to [F188OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (8) [F188OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under subsection (1) as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,
    - (ii) the proposals submitted by him under subsection (4)(c), and
    - (iii) such other information connected with his application as [F188OFCOM] consider appropriate; and
  - (b) a notice—
    - (i) inviting representations to be made to them with respect to any of the applications, and
    - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

#### Textual Amendments

- F188** Words in s. 46 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 105\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F189** Words in s. 46(1)(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 105\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F190** S. 46(1)(e) 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)
- F191** S. 46(4)(da) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(3\)](#)

#### 47 Award of national radio multiplex licences.

- (1) Where [F192OFCOM] have published a notice under section 46(1), they shall in determining whether, or to whom, to award the national radio multiplex licence in question, have regard to the extent to which, taking into account the matters specified in subsection (2) and any representations received by them in pursuance of section 46(8)(b) with respect to those matters, the award of the licence to each applicant would be calculated to promote the development of digital sound broadcasting in the United Kingdom otherwise than by satellite.
- (2) The matters referred to in subsection (1) are—
- (a) the extent of the coverage area (within the area specified in the notice under section 46(1)(c)) proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 46(4)(b),

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- (b) the timetables proposed by the applicant under section 46(4)(b)(ii) and (d),
  - (c) the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
  - (d) the capacity of the digital sound programme services proposed to be included in the service to appeal to a variety of tastes and interests,
  - (e) any proposals by the applicant for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving the service, and
  - (f) whether, in contracting or offering to contract with persons providing digital sound programme services [<sup>F193</sup>, television licensable content services] or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.
- (3) In subsection (2)(e) “acquisition” includes acquisition on hire or loan.
- <sup>F194</sup>(4) . . . . .
- (5) Where [<sup>F192</sup>OFCOM] have awarded a national radio multiplex licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish in such manner as they consider appropriate—
    - (i) the name of the person to whom the licence has been awarded, and
    - (ii) such other information as [<sup>F192</sup>OFCOM] consider appropriate, and
  - (b) grant the licence to that person.

**Textual Amendments**

**F192** Words in s. 47 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 106](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F193** Words in s. 47(2)(f) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(4\)](#)

**F194** S. 47(4) 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)

**48 Reservation of capacity for independent national broadcasters.**

- [<sup>F195</sup>(1A) OFCOM must ensure that the conditions included in national radio multiplex licences (taken together) secure that an amount of digital capacity on the multiplex frequencies is reserved for every independent national broadcaster for the broadcasting of a simulcast radio service provided by that broadcaster.
- (1B) Where the conditions of a licence for a national radio multiplex service reserve capacity on the frequency made available for that service for the broadcasting of a simulcast radio service provided by an independent national broadcaster, those conditions must also include the condition specified in subsection (1C).
- (1C) That condition is the condition that OFCOM consider appropriate for securing that, in consideration of the making by the independent national broadcaster of the payments which —
- (a) are agreed from time to time between him and the licence holder, or
  - (b) in default of agreement, are determined under this section,

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the licence holder uses, for the broadcasting of a simulcast radio service provided by that broadcaster, such of the reserved digital capacity as may be requested, from time to time, by that broadcaster.

(1D) Where conditions are included under this section in a national radio multiplex licence reserving capacity for an independent national broadcaster, OFCOM may include conditions relating to the broadcasting of the simulcast radio service in the licence for the national service provided by that broadcaster.]

(4) Where the holder of a national radio multiplex licence and an independent national broadcaster fail to agree as to the payments to be made under a condition included in the licence in accordance with [F196 subsection (1C)] , either of them may refer the matter to [F197 OFCOM] for their determination.

(5) Before making a determination under subsection (4), [F197 OFCOM] shall give the licence holder and the independent national broadcaster an opportunity of making representations to [F197 OFCOM] about the matter.

(6) In making any determination under subsection (4), [F197 OFCOM] shall have regard to—

- (a) the expenses incurred, or likely to be incurred, by the licence holder in providing the national radio multiplex service and in broadcasting the simulcast radio service in question, and
- (b) the terms on which persons providing national radio multiplex services contract with persons providing national digital sound programme services for the broadcasting of those services.

[F198 (7) In this section “the multiplex frequencies” means the frequencies made available for the purposes of licensed national radio multiplex services.]

#### Textual Amendments

- F195** S. 48(1A)-(1D) substituted for s. 48(1)-(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 107\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F196** Words in s. 48(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 107\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F197** Words in s. 48(4)-(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 107\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F198** S. 48(7) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 107\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- C33** S. 48(4)-(6) applied (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 18 para. 48](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## 49 Duty of Authority to reserve digital capacity for certain purposes of BBC.

(1) In exercising their powers to grant local radio multiplex licences, [F199 OFCOM] shall reserve to the BBC such digital capacity as [F199 OFCOM] consider appropriate in all the circumstances with a view to enabling every BBC local radio service and every BBC radio service for Wales, Scotland or Northern Ireland to be received in digital form within a coverage area which, so far as reasonably practicable, corresponds with the coverage area for that service as provided otherwise than in digital form.

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- (2) The circumstances to which [F199OFCOM] may have regard in performing their duty under subsection (1) include the likely demand for digital capacity by persons providing or proposing to provide local digital sound programme services.
- (3) Where [F199OFCOM] propose to grant a licence to provide a local radio multiplex service, they shall notify the BBC of [F199OFCOM] 's proposals for reserving to the BBC digital capacity on the frequency in respect of which the licence is to be granted in respect of the area or locality in which it is to be granted.
- (4) [F200If the BBC do not give their consent to the proposals within such period as OFCOM may specify in their notice under subsection (3), OFCOM shall] determine—
  - (a) whether any digital capacity is to be reserved to the BBC on the grant of the licence, and
  - (b) if so, the amount of that capacity.
- (5) Before making any determination under subsection (4), [F201OFCOM shall give the BBC an opportunity of making representations to them about their proposals.]
- (6) Where a local radio multiplex licence is granted in respect of a frequency and area or locality in respect of which digital capacity is reserved in pursuance of this section, the licence shall include such conditions as appear to [F202OFCOM] to be appropriate for the purpose of securing that, in consideration of the making by the BBC of such payments as are from time to time agreed between the holder of the licence and the BBC [F203or (in default of agreement) determined under this section] , the holder of the licence uses such digital capacity as may from time to time be requested by the BBC (not exceeding the amount so reserved) for the broadcasting of services provided by the BBC.
- [F204(7) Where the holder of the licence and the BBC fail to agree—
  - (a) the payments to be made under a condition included in the licence in accordance with subsection (6), or
  - (b) the other terms that are to apply in relation to the use of digital capacity in accordance with such a condition,either of them may refer the matter to OFCOM for determination.
- (8) Before making a determination under subsection (7), OFCOM must give the licence holder and the BBC an opportunity of making representations to them about the matter.
- (9) In making any determination under subsection (7), OFCOM shall have regard to—
  - (a) the expenses incurred, or likely to be incurred, by the licence holder in providing the local radio multiplex service in question, and
  - (b) the terms on which persons providing local radio multiplex services contract with persons providing [F205television licensable content services or] local digital additional services for the broadcasting of those services.]

#### Textual Amendments

- F199** Words in s. 49(1)-(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 108\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F200** Words in s. 49(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 108\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F201** Words in s. 49(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 108\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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- F202** Words in s. 49(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 108\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F203** Words in s. 49(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 108\(5\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F204** S. 49(7)-(9) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 108\(6\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F205** Words in s. 49(9)(b) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(5\)](#)

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

- C34** S. 49(4): transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 12](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**50 Local radio multiplex licences.**

- (1) Where—
- (a) the BBC have given their consent to proposals made to them under subsection (3) of section 49, or
  - (b) [<sup>F206</sup>OFCOM have] made a determination under subsection (4) of that section, [<sup>F207</sup>OFCOM] shall publish, in such manner as they consider appropriate, a notice under subsection (2).
- (2) A notice under this subsection is a notice—
- (a) stating that [<sup>F207</sup>the Authority] propose to grant a local radio multiplex licence,
  - (b) specifying the frequency on which the service is to be provided,
  - (c) specifying, in such manner as [<sup>F207</sup>OFCOM] consider appropriate, the area or locality in the United Kingdom in which it is to be available,
  - (d) stating whether in pursuance of a [<sup>F208</sup>determination under section 49(4)] any digital capacity on the frequency in that area or locality is to be reserved for the broadcasting in digital form of one or more BBC radio services and, if so, specifying the capacity reserved and the identity of the BBC radio services concerned,
  - (e) inviting applications for the licence and specifying the closing date for such applications, and
  - (f) specifying the fee payable on any application made in pursuance of the notice.
- (3) When publishing a notice under subsection (2), [<sup>F207</sup>OFCOM] —
- (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii), and
  - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) Any application made in pursuance of a notice under subsection (2) must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (2)(f),
  - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
    - (i) the parts of the area or locality specified under subsection (2)(c) which would be within the coverage area of the service,

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- (ii) the timetable in accordance with which that coverage would be achieved, and
    - (iii) the technical means by which it would be achieved,
  - (c) the applicant's proposals as to the number of digital sound programme services (other than BBC services) to be broadcast and as to the characteristics of each of those services,
  - (d) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of those services would begin,
  - [<sup>F209</sup>(da) the applicant's proposals as to the broadcasting of television licensable content services,]
  - (e) the applicant's proposals as to the broadcasting of digital additional services,
  - (f) such information as [<sup>F207</sup>OFCOM] may reasonably require 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
  - (g) such other information as [<sup>F207</sup>OFCOM] may reasonably require for the purpose of considering the application.
- (5) At any time after receiving such an application and before determining it [<sup>F207</sup>OFCOM] may require the applicant to furnish additional information under any of paragraphs (b) to (g) of subsection (4).
- (6) Any information to be furnished to [<sup>F207</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (7) [<sup>F207</sup>OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under subsection (2) as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,
    - (ii) the proposals submitted by him under subsection (4)(c), and
    - (iii) such other information connected with his application as [<sup>F207</sup>OFCOM] consider appropriate; and
  - (b) a notice—
    - (i) inviting representations to be made to them with respect to any of the applications, and
    - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

#### Textual Amendments

**F206** Words in s. 50(1)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 109\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F207** Words in s. 50 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 109\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F208** Words in s. 50(2)(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 109\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F209** S. 50(4)(da) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(6\)](#)

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## 51 Award of local radio multiplex licences.

- (1) Where [<sup>F210</sup>OFCOM] have published a notice under section 50(2), they shall in determining whether, or to whom, to award the local radio multiplex licence in question, have regard (in relation to each applicant) to the matters specified in subsection (2).
- (2) The matters referred to in subsection (1) are—
  - (a) the extent of the coverage area (within the area or locality specified in the notice under section 50(2)(c)) proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 50(4)(b),
  - (b) the timetables proposed by the applicant under section 50(4)(b)(ii) and (d),
  - (c) the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
  - (d) the extent to which the digital sound programme services (other than BBC services) proposed to be included in the service would cater for the tastes and interests of persons living in the area or locality for which the service is to be provided and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which those services would cater for those tastes and interests,
  - (e) the extent to which any such digital sound programme services would broaden the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which it is to be provided and, in particular, the extent to which they would cater for tastes and interests different from those already catered for by local digital sound programme services provided for that area or locality,
  - [<sup>F211</sup>(f) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service; and]
  - (g) whether, in contracting or offering to contract with persons providing digital sound programme services [<sup>F212</sup>, television licensable content services] or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of those services.
- (3) In considering the matters referred to in subsection (2), [<sup>F210</sup>OFCOM] shall take into account any representations made to them in pursuance of section 50(7)(b) with respect to those matters.
- (4) Where [<sup>F210</sup>OFCOM] have awarded a local radio multiplex licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
  - (a) publish in such manner as they consider appropriate—
    - (i) the name of the person to whom the licence has been awarded, and
    - (ii) such other information as [<sup>F210</sup>OFCOM] consider appropriate, and
  - (b) grant the licence to that person.

### Textual Amendments

**F210** Words in s. 51 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 110\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F211** S. 51(2)(f) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 110\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)



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**F212** Words in s. 51(2)(g) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), **5(7)**

**52 Power to require two or more local radio multiplex licences to be granted to one person.**

- (1) [F213OFCOM] may, before publishing a notice under section 50(2), determine that two or more local radio multiplex licences are on that occasion to be granted to one person.
- (2) Where [F213OFCOM] have so determined, they shall publish a single notice under section 50(2) in relation to the licences.
- (3) In relation to any application made in pursuance of such a notice—
  - (a) references in section 50(4) and 51(2) to the proposed service shall have effect as references to each of the proposed services, and
  - (b) the reference in section 51(1) to the local radio multiplex licence shall have effect as a reference to all the licences concerned.
- (4) Nothing in this section applies in relation to the renewal of a local radio multiplex licence.

**Textual Amendments**

**F213** Words in s. 52 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 111** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**53 Failure to begin providing licensed service and financial penalties on revocation of licence.**

- (1) Subject to subsection (2), subsection (3) applies where at any time after a radio multiplex licence has been granted to any person but before the licence has come into force—
  - (a) that person indicates to [F214OFCOM] that he does not intend to provide the service in question, or
  - (b) [F214OFCOM] for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force.
- (2) Subsection (3) shall not apply in the case of any person by virtue of paragraph (b) of subsection (1) unless [F214OFCOM] 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 this subsection applies—
  - (a) [F214OFCOM] shall serve on the person to whom the licence has been granted a notice revoking the licence as from the time the notice is served on him, and
  - (b) section 47 or 51 shall (subject to subsection (4)) have effect as if he had not made an application for the licence.

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- (4) Section 47 or 51 shall not have effect as mentioned in subsection (3) if [F214OFCOM] decide that it would be desirable to publish a fresh notice under section 46(1) or 50(2) in respect of the grant of the licence.
- (5) Where [F214OFCOM] revoke a radio multiplex 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 specified financial penalty not exceeding—
- (a) in the case of a local radio multiplex licence, [F215£250,000] , or
  - (b) in the case of a national radio multiplex licence, whichever is the greater of—
    - (i) [F215£250,000] , or
    - (ii) the prescribed amount.
- (6) In subsection (5)(b)(ii) “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 [F214OFCOM] estimate would have been the multiplex revenue for that accounting period (as determined in accordance with section 56), and
  - (b) in any other case, 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (7) Any financial penalty payable by any body by virtue of subsection (5) shall, in addition to being recoverable from that body as provided by section 71(4), be recoverable by [F214OFCOM] as a debt due to them from any person who controls that body.

#### Textual Amendments

**F214** Words in s. 53 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 112](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F215** Words in s. 53(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 17](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

#### 54 Conditions attached to national or local radio multiplex licence.

- (1) A radio multiplex licence shall include (1) such conditions as appear to [F216OFCOM] to be appropriate for securing—
- (a) that the licensed service is established by the licence holder in accordance with the timetable and other proposals indicated in the technical plan submitted under section 46(4)(b) or 50(4)(b),
  - (b) the implementation of any proposals submitted by the licence holder under section 46(4)(c) to (f) or 50(4)(c) to (e),
  - (c) that all digital sound programme services broadcast under the licence are provided—
    - (i) in the case of a national radio multiplex licence, by the holder of a national digital sound programme licence under section 60, and
    - (ii) in the case of a local radio multiplex licence, by the BBC or the holder of a local digital sound programme licence under that section,

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- [<sup>F217</sup>(ca) that all television licensable content services broadcast under the licence are provided by the holder of a licence under Part 1 of the 1990 Act to provide such a service or by an EEA broadcaster (within the meaning given by section 12(3A));]
  - (d) that all digital additional services broadcast under the licence are provided by the holder of a licence under section 64,
  - (e) that in the terms on which the holder of the licence contracts, or offers to contract, for the broadcasting of digital sound programme services [<sup>F218</sup>, television licensable content services] or digital additional services, he does not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons,
  - (f) that the holder of the licence does not, in any agreement with a person providing a digital sound programme service [<sup>F219</sup>, television licensable content service] or digital additional services which entitles that person to use a specified amount of digital capacity on the frequency or frequencies to which the licence relates, restrict that person's freedom to make arrangements with some other person as to the use of any of that digital capacity (except to the extent that the restriction is reasonably required for the purpose of ensuring the technical quality of the broadcasts or for the purpose of securing compliance with any other condition of the licence),
  - (g) that the signals carrying the radio multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area or locality for which the service is provided as is for the time being reasonably practicable, and
  - [<sup>F220</sup>(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).]
- [<sup>F221</sup>(1A) The services falling within this subsection are—
- (a) digital sound programme services;
  - (b) simulcast radio services;
  - (c) programme-related services; and
  - (d) relevant technical services.]
- (2) In [<sup>F222</sup>subsection (1A)] —
- (a) “programme-related service” means any digital additional service consisting in the provision of services (apart from advertising) which—
    - (i) are ancillary to the programmes included in one or more digital sound programme services, simulcast radio services or local or national services [<sup>F223</sup>(within the meaning of section 245 of the Communications Act 2003)] and are directly related to the contents of those programmes, or
    - (ii) relate to the promotion or listing of such programmes, and
  - (b) “relevant technical service” means any technical service which relates to one or more digital sound programme services.
- [<sup>F224</sup>(2A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than [<sup>F225</sup>70 per cent.] as OFCOM—
- (a) consider appropriate; and
  - (b) specify in the condition.]

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- (3) The Secretary of State may, after consulting [<sup>F216</sup>OFCOM] , by order amend [<sup>F226</sup>subsection (2A)] by substituting a different percentage for the percentage for the time being specified in [<sup>F227</sup>that subsection] .
- (4) No order under subsection (3) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (5) Any conditions imposed in pursuance of subsection (1)(a) or (b) may be varied by [<sup>F216</sup>OFCOM] with the consent of the licence holder (and section 42(3)(b) shall accordingly not apply to any such variation).
- [<sup>F228</sup>(6) Where the licence holder applies to OFCOM for the variation of a condition which—
- (a) was imposed under subsection (1)(b), and
  - (b) relates to the characteristics of digital sound programme services to be broadcast under the licence,
- then (subject to subsections (6A) and (6B)) OFCOM must vary the condition in accordance with the application.
- (6A) OFCOM are not to vary a national radio multiplex licence in accordance with an application under subsection (6) if it appears to them that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.
- (6B) OFCOM are to vary a local radio multiplex licence in accordance with such an application only if they are satisfied—
- (a) that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided;
  - (b) that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
  - (c) that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the variation.]

[<sup>F229</sup>(7) . . . . .]

#### Textual Amendments

- F216** Words in s. 54 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 113](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F217** S. 54(1)(ca) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(8\)\(a\)](#)
- F218** Words in s. 54(1)(e) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(8\)\(b\)](#)
- F219** Words in s. 54(1)(f) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(8\)\(c\)](#)
- F220** S. 54(1)(h) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 259\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F221** S. 54(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 259\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F222** Words in s. 54(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 259\(4\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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- F223** Words in s. 54(2)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 259(4)(b)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F224** S. 54(2A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 259(5)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F225** Words in s. 54(2A) substituted (25.7.2006) by [The Radio Multiplex Services \(Required Percentage of Digital Capacity\) Order 2006 \(S.I. 2006/2130\)](#), arts. 1(1), **2**
- F226** Words in s. 54(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 259(6)(a)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F227** Words in s. 54(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 259(6)(b)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F228** S. 54(6)-(6B) substituted for s. 54(6) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 315**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F229** S. 54(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)

#### [<sup>F230</sup> **54A Variation of radio multiplex licences: frequency or licensed area**

- (1) OFCOM may, if the requirements of subsections (3) to (5) are met, vary a national radio multiplex licence by extending the area in which the licensed service is required to be available.
- (2) OFCOM may, if the requirements of subsections (3) to (6) are met, vary a local radio multiplex licence by—
  - (a) varying the frequency on which the licensed service is required to be provided,
  - (b) reducing the area or locality in which the licensed service is required to be available, or
  - (c) extending that area or locality to include an adjoining area or locality.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) The application must include a technical plan relating to the service proposed to be provided under the licence indicating, in particular—
  - (a) the area or locality which would be within the coverage area of the service,
  - (b) the timetable in accordance with which that coverage would be achieved, and
  - (c) the technical means by which it would be achieved.
- (5) Before deciding whether to grant the application, OFCOM must publish a notice specifying—
  - (a) the proposed variation of the licence, and
  - (b) a period in which representations may be made to OFCOM about the proposal.
- (6) In the case of a local radio multiplex licence, OFCOM may vary the licence in accordance with the application only if they are satisfied that doing so would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which, before the proposed variation, the local radio multiplex service is required to be available.]

#### **Textual Amendments**

- F230** S. 54A inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 35**, 47(1)

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## 55 Additional payments to be made in respect of national radio multiplex licences.

- (1) Where a national radio multiplex licence is granted in pursuance of a notice under subsection (1) of section 46 which specified a percentage of multiplex revenue under paragraph (h) of that subsection, the licence shall include conditions requiring the licence holder to pay to [F231OFCOM] (in addition to any fees required to be so paid by virtue of section 43(1)(c)) in respect of each accounting period of his falling within the period for which the licence is in force, an amount representing such percentage of the multiplex revenue for that accounting period (determined under section 56) as was specified in the notice.
- (2) The Secretary of State may by order provide that, in relation to any notice under subsection (1) of section 46 published while the order is in force, no percentage shall be specified under paragraph (h) of that subsection.
- (3) Any order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A national radio multiplex licence may include conditions—
  - (a) enabling [F231OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1), and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may in particular include conditions—
  - (a) authorising [F231OFCOM] 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.
- (6) Where—
  - (a) the first complete accounting period of the licence holder falling within the period for which the licence is in force (“the licence period”) does not begin at the same time as that period, or
  - (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) 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.

### Textual Amendments

**F231** Words in s. 55 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 114](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## 56 Multiplex revenue.

- (1) For the purposes of [F232this Part] the multiplex revenue for each accounting period of [F233the person who is the multiplex provider in relation to a national radio multiplex service] shall consist of—

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- (a) all payments received or to be received by him or any person connected with him from a person other than a programme provider or an additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital sound programme service or digital additional service broadcast by means of the national radio multiplex service <sup>F234</sup> ..., of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital sound programme service or digital additional service,
  - (b) all payments received or to be received by him or any person connected with him in respect of the broadcasting of any simulcast radio service by means of the national radio multiplex service,
  - (c) all payments received or to be received by any programme provider or any person connected with him from a person other than [<sup>F235</sup>the multiplex provider] , an additional service provider or another programme provider—
    - (i) in consideration of the inclusion in that period, in any digital sound programme service provided by him for broadcasting by means of the national radio multiplex service, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital sound programme service, and
  - (d) all payments received or to be received by any additional services provider or any person connected with him from a person other than [<sup>F236</sup>the multiplex provider] , a programme provider or another additional services provider—
    - (i) in consideration of the inclusion in that period, in any digital additional service provided by him for broadcasting by means of the national radio multiplex service, of advertisements or other programmes, or
    - (ii) in respect of charges made in that period for the reception of programmes included in any such digital additional service.
- (2) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (1)(a)(i), any payments are made to [<sup>F237</sup>the multiplex provider] or any person connected with him to meet any payments payable by [<sup>F237</sup>the multiplex provider] by virtue of section 55(1), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (3) In the case of an advertisement included as mentioned in subsection (1)(a)(i), (c)(i) or (d)(i) under arrangements made between—
- (a) [<sup>F237</sup>the multiplex provider] , a programme provider or an additional services provider or any person connected with any of them, and
  - (b) a person acting as an advertising agent,
- the amount of any receipt by [<sup>F237</sup>the multiplex provider] , programme provider or additional services provider 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 (4), be the amount of the payment by the advertiser after the deduction of the commission.

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- (4) If the amount deducted by way of commission as mentioned in subsection (3) 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.
- (5) If, in any accounting period of [<sup>F237</sup>the multiplex provider], a programme provider or an additional services provider or a person connected with any of them derives, in relation to any programme to be included in the relevant service, any financial benefit (whether direct or indirect) from payments made by any person other than the licence holder, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the relevant payments shall be taken to include the amount of the financial benefit so derived by [<sup>F237</sup>the multiplex provider] or the connected person, as the case may be.
- (6) In subsection (5)—
- (a) “the relevant service” means—
    - (i) in relation to a programme provider or a person connected with him, any digital sound programme service provided as mentioned in subsection (1)(c)(i), and
    - (ii) in relation to an additional services provider or a person connected with him, any digital additional service provided as mentioned in subsection (1)(d)(i), and
  - (b) “relevant payments” means—
    - (i) in relation to a programme provider, the payments referred to in subsection (1)(c), and
    - (ii) in relation to an additional services provider, the payments referred to in subsection (1)(d).
- (7) Where, in any accounting period of [<sup>F237</sup>the multiplex provider] —
- (a) [<sup>F237</sup>the multiplex provider] provides a digital sound programme service or digital additional service for broadcasting by means of the multiplex service,
  - (b) [<sup>F237</sup>the multiplex provider] is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(a) being made to the licence holder,
  - (c) a programme provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(c) being made to the programme provider, or
  - (d) an additional services provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(d) being made to the additional services provider,
- [<sup>F238</sup>OFCOM] may, if they consider that the amount which would (apart from this subsection) be the multiplex revenue for that accounting period is less than it would have been if the digital sound programme service or digital additional service had been provided, or the activity engaged in, by another person at arm’s length, treat the multiplex revenue as increased by the amount of the difference.
- (8) Where, in any accounting period of [<sup>F237</sup>the multiplex provider] or a programme provider or additional services provider receives payments falling within subsection (1)(a), (b), (c) or (d) from a person connected with him and it appears to the Authority that the amount which (apart from this subsection) would be the multiplex revenue for that accounting period is less than it would have been if the arrangements between him and the connected person were such as might be expected between parties



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at arm's length, [F238OFCOM] may treat the multiplex revenue as increased by the amount of the difference.

(9) In this section—

“additional services provider”, in relation to [F239a national radio multiplex service] , means any person who provides any digital additional service for broadcasting by means of [F240that radio multiplex service] ;

“[F241multiplex provider ”-

in relation to a national radio multiplex service for which a person holds a licence under this Part, means the licence holder; and

in relation to a national radio multiplex service which is not licensed under this Part, means the person who provides that service.]

“programme provider”, in relation to [F239a national radio multiplex service] , means any person who provides a digital sound programme service for broadcasting by means of [F240that radio multiplex service] .

[F242(10) This section and section 57 shall have effect as if references in this section to digital sound programme services included references to television licensable content services.]

#### Textual Amendments

- F232** Words in s. 56(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F233** Words in s. 56(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F234** Words in s. 56(1)(a)(i) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(2\)\(c\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F235** Words in s. 56(1)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F236** Words in s. 56(1)(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F237** Words in s. 56(2)-(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F238** Words in s. 56(2)-(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F239** Words in s. 56(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F240** Words in s. 56(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F241** Words in s. 56(9) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 115\(4\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F242** S. 56(10) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\), arts. 1\(1\), 5\(9\)](#)

#### 57 Attribution of multiplex revenue to licence holder and others.

(1) For the purposes of section [F24359(2A) and (2B)] , the share of multiplex revenue attributable to [F244the person who is the multiplex provider in relation to a national radio multiplex service] in respect of any accounting period of his shall be—

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- (a) the aggregate of—
- (i) payments falling within paragraph (a) or (b) of section 56(1), and
  - (ii) payments received or to be received by him from programme providers and additional services providers in respect of the provision of radio multiplex services in that period,
- less
- (b) the amount of any payments made or to be made to programme providers or additional service providers which would fall within paragraph (c) or (d) of section 56(1) but for the fact that they are received from [F245 the person who is the multiplex provider in relation to a national radio multiplex service] .
- (2) For the purposes of [F246 sections 62(2A) to (5) and 66(2A) to (5)] , the share of multiplex revenue attributable to a programme provider or additional services provider in relation to a national radio multiplex service in respect of any accounting period of [F247 the multiplex provider] shall be—
- (a) the aggregate of—
- (i) payments falling within paragraph (c) or (d) of section 56(1), and
  - (ii) payments received or to be received from [F247 the multiplex provider] which would fall within one of those paragraphs but for the fact that they are received from [F247 the multiplex provider] ,
- less
- (b) the amount of any payments made or to be made to [F247 the multiplex provider] in respect of the provision of radio multiplex services in that period.
- (3) In a case falling within subsection (7) or (8) of section 56, [F248 OFCOM] may treat the share of multiplex revenue attributable to any person for the accounting period of [F249 the multiplex provider] as increased by such amount as they consider appropriate to take account of the circumstances mentioned in that subsection.
- (4) In this section “additional services provider” [F250, multiplex provider] and “programme provider”, in relation to [F251 a national radio multiplex service] , have the same meaning as in section 56.

#### Textual Amendments

- F243** Words in s. 57(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 18\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F244** Words in s. 57(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 116\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F245** Words in s. 57(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 116\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F246** Words in s. 57(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 18\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F247** Words in s. 57(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 116\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F248** Words in s. 57(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 116\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F249** Words in s. 57(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 116\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F250** Words in s. 57(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 116\(5\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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*Changes to legislation:* Broadcasting Act 1996 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**F251** Words in s. 57(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 116\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## 58 Duration and renewal of national or local radio multiplex licences.

- (1) A radio multiplex licence shall (subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 59(8)) continue in force for a period of twelve years.
- (2) A radio multiplex licence [<sup>F252</sup>granted within ten years] of the commencement of this section may be renewed on one occasion in accordance with this section
  - [<sup>F253</sup>(a) in the case of a licence granted within six years of that commencement, for a period of twelve years beginning with the date on which it would otherwise expire; and
  - (b) in any other case, for a period of eight years beginning with that date<sup>F254</sup>; but nothing in this subsection prevents section 58ZA from applying in relation to any licence.]]
- (3) An application for the renewal of a radio multiplex licence under subsection (2) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than [<sup>F255</sup>the day falling three months before] the relevant date.
- (4) At any time before determining the application, [<sup>F256</sup>OFCOM] may—
  - (a) require the applicant to furnish—
    - (i) a technical plan which supplements that submitted by the licence holder under section 46(4)(b) or 50(4)(b), and
    - (ii) in the case of a national radio multiplex licence, proposals which supplement that submitted by the licence holder under section 46(4)(f), and
  - (b) notify the applicant of requirements which must be met by that supplementary technical plan or those supplementary proposals and relate to the matters referred to in section 46(4)(b)(i) and (ii) or 50(4)(b)(i) and (ii).
- <sup>F257</sup>(5) .....
- (6) Where any such application is made <sup>F258</sup>..., [<sup>F256</sup>OFCOM] may postpone consideration of it by them for as long as they think appropriate having regard to subsection (10).
- (7) Where an application for the renewal of a radio multiplex licence has been duly made to [<sup>F256</sup>OFCOM], they may refuse the application only if—
  - (a) it appears to them that the applicant has failed to comply with any of the conditions included in his licence,
  - (b) any supplementary technical plan or supplementary proposals submitted under subsection (4)(a) fail to meet requirements notified to the applicant under subsection (4)(b), or
  - (c) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied with the conditions to be included in the licence as renewed.
- (8) Subject to subsection (9), on the grant of any such application [<sup>F256</sup>OFCOM] may with the consent of the Secretary of State, and shall if so required by him—

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- (a) specify a percentage different from that specified under section 46(1)(h) as the percentage of multiplex revenue for each accounting period of his that will be payable by the applicant in pursuance of section 55(1) during the period for which the licence is to be renewed, or
  - (b) specify such a percentage where none was specified under section 46(1)(h); and [<sup>F256</sup>OFCOM] may specify under paragraph (a) or (b) either of the things mentioned in section 46(2)(b).
- (9) Where an order under section 55(2) is in force on the relevant date, no percentage of multiplex revenue shall be payable as mentioned in subsection (8)(a) during the period for which the licence is to be renewed.
- (10) Where [<sup>F256</sup>OFCOM] have granted a person’s application under this section, they shall formally renew his licence from the date on which it would otherwise expire; but in the case of a national multiplex licence they shall not so renew his licence unless they have notified him of any percentage specified by them under subsection (8) and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (11) Where a radio multiplex licence has been renewed under this section, the licence as renewed shall include such further conditions as appear to [<sup>F256</sup>OFCOM] to be appropriate for securing the implementation of any supplementary technical plan and supplementary proposals submitted under subsection (4)(a).
- (12) In this section “the relevant date”, in relation to a radio multiplex licence, means the date which [<sup>F256</sup>OFCOM] determine to be that by which they would need to publish a notice under section 46(1) or 50(2) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the service formerly provided under that licence.
- [<sup>F259</sup>(12A) A determination for the purposes of subsection (12)—
- (a) must be made at least one year before the date determined; and
  - (b) must be notified by OFCOM to the person who holds the licence in question.]
- (13) Nothing in this section prevents the holder of a radio multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 46(1) or 50(2).

#### Textual Amendments

- F252** Words in s. 58(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 261(a)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F253** Words in s. 58(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 261(b)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F254** Words in s. 58(2)(b) inserted (6.4.2015) by [The Broadcasting Act 1996 \(Renewal of Local Radio Multiplex Licences\) Regulations 2015 \(S.I. 2015/904\)](#), regs. 1, 2
- F255** Words in s. 58(3) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 117(3)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F256** Words in s. 58 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 117(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F257** S. 58(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 117\(4\)](#), **Sch. 19(1)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F258** Words in s. 58(6) 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)

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**F259** S. 58(12A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 117\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

**C35** S. 58(3) modified (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 18 para. 50\(3\)-\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

[<sup>F260</sup>**58ZA** **Renewal of local radio multiplex licences**

- (1) The holder of a local radio multiplex licence may apply to OFCOM for a renewal of that licence if that person has completed the works necessary to ensure that, as a minimum, coverage of the multiplex service in the area or locality in which the licence is granted complies with the coverage plan for that area or locality.
- (2) A licence renewed under this section is to expire on 31st December 2030.
- (3) An application for a renewal of a licence must be made not later than the day falling three months before the relevant date.
- (4) At any time before determining the application, OFCOM may require the applicant to provide a technical plan supplementing those (if any) submitted under sections 50(4)(b) and 58(4)(a)(i).
- (5) Where an application has been duly made under this section, OFCOM may refuse the application only if—
  - (a) it appears to them that the applicant has failed to comply with any of the conditions included in the licence, or
  - (b) they are not satisfied that the applicant would, if the licence were renewed, provide a service complying with the conditions to be included in the licence as renewed.
- (6) Where OFCOM have granted a person's application they must formally renew the person's licence from the date on which the application is granted.
- (7) Where a licence is renewed under this section, the licence as renewed must include—
  - (a) a condition that the holder of the licence must, for the duration of the licence, maintain, as a minimum, the coverage of the multiplex service in the area or locality concerned at the level attained at the time the application for renewal of the licence was made;
  - (b) such further conditions as appear to OFCOM to be appropriate for securing the implementation of any supplementary technical plan submitted under subsection (4).
- (8) In this section—

“coverage plan”, in relation to an area or locality in which a local radio multiplex licence is granted, means a plan produced by OFCOM which sets out the coverage on local Digital Audio Broadcasting which OFCOM have assessed is broadly equivalent to relevant existing FM local commercial radio coverage in that area or locality

“the relevant date” shall be determined in accordance with section 58.
- (9) Nothing in this section prevents the holder of a local radio multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 50(2).]

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#### Textual Amendments

**F260** S. 58ZA inserted (6.4.2015) by [The Broadcasting Act 1996 \(Renewal of Local Radio Multiplex Licences\) Regulations 2015 \(S.I. 2015/904\)](#), regs. 1, 3

### [<sup>F261</sup>58A Renewal of radio multiplex licences: supplementary

- (1) The Secretary of State may by regulations—
  - (a) amend section 58, and
  - (b) make further provision about the renewal of radio multiplex licences.
- (2) The regulations may, in particular, make provision about—
  - (a) the circumstances in which OFCOM may renew a radio multiplex licence,
  - (b) the period for which a licence may be renewed,
  - (c) the information that OFCOM may require an applicant for renewal of a licence to provide,
  - (d) the requirements that must be met by such an applicant,
  - (e) the grounds on which OFCOM may refuse an application for renewal of a licence,
  - (f) payments to be made in respect of a licence following its renewal, and
  - (g) further conditions to be included in a licence following its renewal.
- (3) The regulations may, in particular, amend or modify this Part of this Act.
- (4) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) The power to make regulations under this section may not be exercised after 31 December 2015 (but this does not affect the continuation in force of any regulations made under this section before that date).]

#### Textual Amendments

**F261** S. 58A inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 36(1), 47(1)

### 59 Enforcement of national or local radio multiplex licences.

- (1) If [<sup>F262</sup>OFCOM] are satisfied that the holder of a radio multiplex licence has failed to comply with any condition of the licence or with any direction given by [<sup>F262</sup>OFCOM] 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 [<sup>F262</sup>OFCOM], or
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a national radio multiplex licence shall not exceed [<sup>F263</sup>the maximum penalty given by subsection (2A)].]

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- [<sup>F264</sup>(2A) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 5 per cent. of the aggregate amount of the share of multiplex revenue attributable to him for his last complete accounting period falling within a period for which his licence has been in force (“the relevant period”).
- (2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.
- (2C) Section 57(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above.]
- (4) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a local radio multiplex licence shall not exceed [<sup>F265</sup>£250,000] .
  - (5) [<sup>F262</sup>OFCOM] shall not serve on any person any notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
  - (6) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [<sup>F262</sup>OFCOM] 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.
  - (7) Where [<sup>F262</sup>OFCOM] serve a notice on a BBC company under any provision of this section, they shall send a copy of the notice to the Secretary of State.
  - (8) Subject to subsection (9), section 111 of the 1990 Act (power to revoke licence granted under Chapter II of Part III of the 1990 Act) shall have effect in relation to a radio multiplex licence as it has effect in relation to a licence under Chapter II of Part III of the 1990 Act.
  - (9) In its application in relation to a radio multiplex licence, section 111 of the 1990 Act shall have effect—
    - (a) with the substitution in subsection (1)(a) for the reference to Part III of the 1990 Act of a reference to this Part, and
    - (b) with the omission of subsection (4) and the reference to that subsection in subsection (6).

#### Textual Amendments

**F262** Words in s. 59 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 118](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F263** Words in s. 59(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 19\(1\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F264** S. 59(2A)-(2C) substituted for s. 59(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 19\(2\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F265** Word in s. 59(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 19\(3\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

**C36** S. 59(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. 4(d)** (with art. 5)

*Digital sound programme services*

**60 Licensing of digital sound programme services.**

- (1) For the purposes of this Part a digital sound programme service is—
  - (a) a “national digital sound programme service” if it is provided for broadcasting by means of a national radio multiplex service [<sup>F266</sup>, by means of a television multiplex service or by means of a general multiplex service] , and
  - (b) a “local digital sound programme service” if it is provided for broadcasting by means of a local radio multiplex service.
- (2) A licence to provide digital sound programme services (in this Part referred to as a “digital sound programme licence”) may be either—
  - (a) a licence to provide national digital sound programme services (in this Part referred to as a “national digital sound programme licence”), or
  - (b) a licence to provide local digital sound programme services (in this Part referred to as a “local digital sound programme licence”).
- (3) An application for a digital sound programme licence shall—
  - (a) be made in such manner as [<sup>F267</sup>OFCOM] may determine, and
  - (b) be accompanied by such fee (if any) as they may determine.
- (4) At any time after receiving such an application and before determining it, [<sup>F267</sup>OFCOM] may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (5) Any information to be furnished to [<sup>F267</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) Where an application for a digital sound programme licence is made to [<sup>F267</sup>OFCOM] in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 42(2)(a) or 44(1).
- [<sup>F268</sup>(6A) Section 89 of the 1990 Act (disqualification from being licence holder or concerned with the provision of a programme service if convicted of a transmitting offence) shall apply in relation to a licence under this section as it applies to a licence under Part 3 of that Act, but with the omission of paragraph (b) of subsection (3) of that section and of the word “or” immediately before that paragraph.]

- <sup>F269</sup>(7) .....
- <sup>F269</sup>(8) .....
- <sup>F269</sup>(9) .....
- <sup>F269</sup>(10) .....



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### Textual Amendments

- F266** Words in s. 60(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 260(1)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F267** Words in s. 60 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 119(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F268** S. 60(6A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 119\(3\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F269** S. 60(7)-(10) 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](#))

## 61 Duration and conditions of digital sound programme licence.

- (1) Subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 62(10), a digital sound programme licence shall continue in force until it is surrendered by its holder.
- (2) A digital sound programme licence shall include such conditions as appear to <sup>[F270]</sup>OFCOM] to be appropriate for requiring the holder of the licence—
- (a) on entering into any agreement with <sup>[F271]</sup>the provider of a radio multiplex service, of a television multiplex service or of a general multiplex service] for the provision of a digital sound programme service to be broadcast <sup>[F272]</sup>by means of the multiplex service] , to notify <sup>[F270]</sup>OFCOM] —
- (i) of the identity of the <sup>[F273]</sup>multiplex service] ,
- (ii) of the characteristics of the digital sound programme service to which the agreement relates, and
- (iii) of the period during which it will be provided,
- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify <sup>[F270]</sup>OFCOM] of the variation so far as relating to those matters, and
- (c) where he is providing a digital sound programme service to <sup>[F274]</sup>the provider of a radio multiplex service, of a television multiplex service or of a general multiplex service] in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify <sup>[F270]</sup>OFCOM] of that fact.

<sup>F275</sup>(3) .....

<sup>F275</sup>(4) .....

### Textual Amendments

- F270** Words in s. 61(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 120(2)(a)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F271** Words in s. 61(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 120(2)(b)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F272** Words in s. 61(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 120(2)(c)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F273** Words in s. 61(2)(a)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 120(2)(d)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F274** Words in s. 61(2)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 120(2)(b)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

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**F275** S. 61(3)(4) 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)

## 62 Enforcement of digital sound programme licences.

- (1) If [<sup>F276</sup>OFCOM] are satisfied that the holder of a digital sound programme licence has failed to comply with any condition of the licence or with any direction given by [<sup>F276</sup>OFCOM] 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 [<sup>F276</sup>OFCOM] ,
  - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice, and
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a national digital sound programme licence shall not exceed [<sup>F277</sup>the maximum penalty given by subsection (2A).]
- [<sup>F278</sup>(2A) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods.]
- (4) In [<sup>F279</sup>subsection (2A)] “relevant accounting period”, in relation to a [<sup>F280</sup>relevant multiplex service, means the last accounting period of the multiplex provider] .
- (5) Where, in the case of any [<sup>F281</sup>relevant multiplex service] , the first accounting period of the [<sup>F282</sup>multiplex provider] throughout which the holder of the digital sound programme licence provides a digital sound programme service for broadcasting by means of [<sup>F283</sup>that relevant multiplex service] (“the first period”) has [<sup>F284</sup>not ended when the penalty is imposed, then for the purposes of this section] the share of multiplex revenue attributable to the holder of the digital sound programme licence in relation to [<sup>F283</sup>that relevant multiplex service] for the relevant accounting period shall be taken to be the amount which [<sup>F276</sup>OFCOM] estimate to be the share of multiplex revenue attributable to him for the first period.
- [<sup>F285</sup>(5A) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).
- (5B) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to television multiplex services or general multiplex services is to be in accordance with section 15(2) and (3).]
- [<sup>F286</sup>(5B) For the purposes of this section, a service is a relevant multiplex service if it is—
- (a) a national radio multiplex service;
  - (b) a television multiplex service; or
  - (c) a general multiplex service.

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- (5C) In this section, “multiplex provider”—
- (a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and
  - (b) in relation to a television multiplex service or a general multiplex service, means the multiplex provider within the meaning of section 14.]
- (6) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a local digital sound programme licence shall not exceed [F287£250,000] .
- (7) [F276OFCOM] shall not serve on any person any notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (8) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [F276OFCOM] 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.
- (9) Where [F276OFCOM] serve a notice on a BBC company under any provision of this section, they shall send a copy of the notice to the Secretary of State.
- (10) Subject to subsections (11) and (12), [F288sections 109, 111 and 111B of the 1990 Act (enforcement)] shall apply in relation to a digital sound programme licence as they apply in relation to a licence under Chapter II of Part III of the 1990 Act.
- (11) In its application in relation to a digital sound programme licence, section 109(1) of the 1990 Act shall have effect with the substitution for the reference to a direction under Part III of that Act of a reference to a direction under this Part.
- (12) In its application in relation to a digital sound programme licence, section 111 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part III of that Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (13) It is hereby declared that any exercise by [F276OFCOM] of their powers under subsection (1) in respect of any failure to comply with any condition of a digital sound programme licence shall not preclude any exercise by [F276OFCOM] of their powers under section 109 of the 1990 Act in respect of that failure.

#### Textual Amendments

**F276** Words in s. 62 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 121\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F277** Words in s. 62(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 20\(1\)\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F278** S. 62(2A) substituted for s. 62(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 20\(2\)\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F279** Words in s. 62(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 20\(3\)\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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- F280** Words in s. 62(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 121(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F281** Words in s. 62(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 121(4)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F282** Words in s. 62(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 121(4)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F283** Words in s. 62(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 121(4)(c)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F284** Words in s. 62(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 20(4)(7) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F285** S. 62(5A)(5B) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 20(5)(7) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F286** S. 62(5B)(5C) inserted (29.12.2003) by virtue of Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 121(5)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F287** Word in s. 62(6) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 20(6)(7) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F288** Words in s. 62(10) substituted (27.6.2017) by Digital Economy Act 2017 (c. 30), **ss. 91(2), 118(2)**

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

- C37** S. 62(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. 4(e)** (with art. 5)

### *Digital additional services provided on sound broadcasting frequencies*

## 63 Digital additional services.

- (1) In this Part “digital additional service” means any service which—
- [<sup>F289</sup>(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;
  - (aa) is so provided with a view to the broadcasting being by means of a radio multiplex service or by means of a general multiplex service; and]
  - (b) is not a digital sound programme service, a simulcast radio service, [<sup>F290</sup>a television licensable content service, an ancillary service, a relevant ancillary service within the meaning of section 232 of the Communications Act 2003] or a technical service.
- (2) In this Part “ancillary service” [<sup>F291</sup>(except in the expression “relevant ancillary service”)] means any service which is provided by the holder of a digital sound programme licence or by an independent national broadcaster and consists in the provision of any service (other than advertising) which—
- (a) is ancillary to programmes included in a digital sound programme service or simulcast radio service provided by him and is directly related to their contents, or
  - (b) relates to the promotion or listing of such programmes.
- (3) In this Part “technical service” means a service which—
- (a) is provided for technical purposes connected with the encryption or decryption of one or more digital sound programme services or digital additional services [<sup>F292</sup>, television licensable content services] , and

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(b) is of a description specified in an order made by the Secretary of State.

[<sup>F293</sup>(3A) In this section “available for reception by members of the public” shall be construed in accordance with section 361 of the Communications Act 2003.]

(4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F289** S. 63(1)(a)(aa) substituted for s. 63(1)(a) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 260(2), 411(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F290** Words in s. 63(1)(b) substituted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), [arts. 1\(1\), 5\(10\)\(a\)](#)
- F291** Words in s. 63(2) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), [arts. 1\(1\), 5\(10\)\(b\)](#)
- F292** Words in s. 63(3)(a) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), [arts. 1\(1\), 5\(10\)\(c\)](#)
- F293** S. 63(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 260(3), 411(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

## 64 Licensing of digital additional services.

- (1) An application for a licence to provide digital additional services (in this Part referred to as a “digital additional services licence”) shall—
- be made in such manner as [<sup>F294</sup>OFCOM] may determine, and
  - be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, [<sup>F294</sup>OFCOM] may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to [<sup>F294</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital additional services licence is made to [<sup>F294</sup>OFCOM] in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 42(2)(a) or 44(1).

#### Textual Amendments

- F294** Words in s. 64 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), **Sch. 15 para. 122** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

## 65 Duration and conditions of digital additional services licence.

- (1) Subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 66(10), a digital additional services licence shall continue in force until it is surrendered by its holder.
- (2) A digital additional services licence shall include such conditions as appear to [<sup>F295</sup>OFCOM] to be appropriate for requiring the holder of the licence—

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- (a) on entering into any agreement with [<sup>F296</sup>the provider of a radio multiplex service or of a general multiplex service] for the provision of digital additional services to be broadcast [<sup>F297</sup>by means of the multiplex service] , to notify [<sup>F295</sup>OFCOM] —
  - (i) of the identity of the [<sup>F298</sup>multiplex service] ,
  - (ii) of the period during which the services will be provided, and
  - (iii) where under the agreement the holder of the digital additional services licence will be entitled to the use of a specified amount of digital capacity, of that amount,
- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii) to notify [<sup>F295</sup>OFCOM] of the variation so far as relating to those matters, and
- (c) where he is providing digital additional services to [<sup>F299</sup>the provider of a radio multiplex service or of a general multiplex service] in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify [<sup>F295</sup>OFCOM] of that fact.

#### Textual Amendments

- F295** Words in s. 65(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 123\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F296** Words in s. 65(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 123\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F297** Words in s. 65(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 123\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F298** Words in s. 65(2)(a)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 123\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F299** Words in s. 65(2)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 123\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## 66 Enforcement of digital additional services licences.

- (1) If [<sup>F300</sup>OFCOM] are satisfied that the holder of a digital additional services licence has failed to comply with any condition of the licence or with any direction given by [<sup>F300</sup>OFCOM] 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 [<sup>F300</sup>OFCOM] ,
  - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice, or
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) Subject to subsection (4), the amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a digital additional services licence shall not exceed [<sup>F301</sup>the maximum penalty given by subsection (2A).]

[<sup>F302</sup>(2A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and

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- (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods.]
- (4) Where the holder of a digital additional services licence has not provided any digital additional services for broadcasting by means of a [F303 relevant multiplex service] , the amount of any penalty imposed on him under subsection (1)(a) shall not exceed [F304 £250,000] .
- (5) In [F305 subsection (2A)] “relevant accounting period”, in relation to a [F306 relevant multiplex service, means the last accounting period of the multiplex provider] .
- (6) Where, in the case of any [F307 relevant multiplex service] , the first accounting period of the [F308 multiplex provider] throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting by means of [F309 that relevant multiplex service] (“the first period”) has [F310 not ended when the penalty is imposed, then for the purposes of this section] the share of multiplex revenue attributable to the holder of the digital additional services licence in relation to [F309 that relevant multiplex service] for the relevant accounting period shall be taken to be the amount which [F300 OFCOM] estimate to be the share of multiplex revenue attributable to him for the first period.
- [F311(6A) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).
- (6B) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to general multiplex services is to be in accordance with section 15(2) and (3).]
- [F312(6B) For the purposes of this section, a service is a relevant multiplex service if it is—
- (a) a national radio multiplex service; or
- (b) a general multiplex service.
- (6C) In this section, “multiplex provider”—
- (a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and
- (b) in relation to a general multiplex service, means the multiplex provider within the meaning of section 14.]
- (7) [F300 OFCOM] shall not serve on any person any notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (8) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [F300 OFCOM] 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.
- (9) Where [F300 OFCOM] serve a notice on a BBC company under any provision of this section, they shall send a copy of the notice to the Secretary of State.
- (10) Subject to subsections (11) and (12), section 109 (power to require scripts etc. or broadcasting of correction or [F313 statement of findings] or not to repeat programme)

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and section 111 (power to revoke licences) of the 1990 Act shall apply in relation to a digital additional services licence as they apply in relation to a licence under Chapter II of Part III of the 1990 Act.

- (11) In its application in relation to a digital additional services licence, section 109(1) of the 1990 Act shall have effect with the substitution for the reference to a direction under Part III of that Act of a reference to a direction under this Part.
- (12) In its application in relation to a digital additional services licence, section 111 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part III of that Act of a reference to this Part, and
  - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (13) It is hereby declared that any exercise by [F300OFCOM] of their powers under subsection (1) in respect of any failure to comply with any condition of a digital additional services licence shall not preclude any exercise by [F300OFCOM] of their powers under section 109 of the 1990 Act in respect of that failure.

#### Textual Amendments

- F300** Words in s. 66 substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F301** Words in s. 66(2) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 21(1)(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F302** S. 66(2A) substituted for s. 66(3) (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 21(2)(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F303** Words in s. 66(4) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F304** Word in s. 66(4) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 21(3)(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F305** Words in s. 66(5) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 21(4)(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F306** Words in s. 66(5) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F307** Words in s. 66(6) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(5)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F308** Words in s. 66(6) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(5)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F309** Words in s. 66(6) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(5)(c)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F310** Words in s. 66(6) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 21(5)(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F311** S. 66(6A)(6B) inserted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 21(6)(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F312** S. 66(6B)(6C) inserted (29.12.2003) by virtue of **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F313** Words in s. 66(10) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 124(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)



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

- C38** S. 66(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. 4(f)** (with art. 5)

*Miscellaneous and supplemental*

**67 Review of digital radio broadcasting.**

- (1) For the purpose of considering for how long it would be appropriate for sound broadcasting services to continue to be provided in analogue form, the Secretary of State—
- (a) shall keep under review the extent of—
- (i) the provision in the United Kingdom of radio multiplex services,
- (ii) the availability in the United Kingdom of digital sound programme services and the availability there in digital form of national services (within the meaning of Part III of the 1990 Act) and the sound broadcasting services of the BBC, and
- (iii) the ownership or possession in the United Kingdom of equipment capable of receiving the services referred to in sub-paragraph (ii) when broadcast or transmitted in digital form,
- and the likely future extent of such provision, such availability and such ownership or possession, and
- (b) shall, on or before the fourth anniversary of the day on which the first national radio multiplex licence is granted under section 47, and at such time or times thereafter as he thinks fit, require [<sup>F314</sup>OFCOM] and the BBC to report to him on the matters referred to in paragraph (a).
- (2) If [<sup>F314</sup>OFCOM] or the BBC are required to submit a report under subsection (1)(b), they shall submit the report within twelve months of the date of the requirement.
- (3) Before making any report under this subsection (1)(b), [<sup>F314</sup>OFCOM] shall consult—
- (a) the holders of all radio multiplex licences,
- (b) the holders of digital sound programme licences who are providing digital sound programme services which are being broadcast, and
- (c) such other persons providing services licensed by [<sup>F314</sup>OFCOM] under this Part or Part III of the 1990 Act as the Authority think fit,
- and [<sup>F314</sup>OFCOM] shall include in their report a summary of representations made to them by the persons consulted.
- (4) For the purpose mentioned in subsection (1), the Secretary of State shall, on requiring reports under subsection (1)(b), consult—
- (a) such persons appearing to him to represent listeners as he thinks fit, and
- (b) such other persons as he thinks fit,
- in connection with the matters referred to in subsection (1)(a) and also, if the Secretary of State thinks fit, as to the likely effects on listeners of any sound broadcasting service ceasing to be broadcast in analogue form.
- (5) In this section “sound broadcasting service” has the same meaning as in Part III of the 1990 Act.

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**Textual Amendments**  
**F314** Words in s. 67 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 125](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)  
**Modifications etc. (not altering text)**  
**C39** S. 67: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 11](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

<sup>F315</sup>**68 Promotion of equal opportunities and fair treatment.**  
.....

**Textual Amendments**  
**F315** S. 68 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)

**69 Power to vary amount of financial penalties.**

(1) The Secretary of State may by order amend any of the provisions specified in subsection (2) by substituting a different sum for the sum for the time being specified there.

[<sup>F316</sup>(2) The provisions referred to in subsection (1) are—

- (a) section 53(5)(a) and (b)(i);
- (b) section 59(2A)(a) and (4);
- (c) section 62(2A)(a) and (6); and
- (d) section 66(2A)(a) and (4).

(3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.]

**Textual Amendments**  
**F316** S. 69(2)(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 22](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**70 Computation of multiplex revenue.**

Part II of Schedule 1 (which contains provisions relating to the computation of multiplex revenue for the purposes of this Part) shall have effect.

<sup>F317</sup>**71 Certain receipts of Authority to be paid into Consolidated Fund.**  
.....

*Status:* Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.

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### Textual Amendments

**F317** S. 71 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)

## 72 Interpretation of Part II.

(1) In this Part (unless the context otherwise requires)—

“ancillary service” has the meaning given by section 63(2);

<sup>F318</sup>  
...

“digital additional service” has the meaning given by section 63(1), and “digital additional services licence” means a licence to provide such services;

“digital sound programme service” has the meaning given by section 40(5), and “digital sound programme licence” means a licence to provide such services;

[<sup>F319</sup>“general multiplex service” has the same meaning as in Part 3 of the Communications Act 2003;]

“independent national broadcaster” has the meaning given by section 41(1);

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“local digital sound programme service” and “national digital sound programme service” shall be construed in accordance with section 60(1) and “local digital sound programme licence” and “national digital sound programme licence” mean a licence to provide local digital sound programme services and a licence to provide national digital sound programme services respectively;

“local radio multiplex service” and “national radio multiplex service” shall be construed in accordance with section 40(4), and “local radio multiplex licence” and “national radio multiplex licence” mean a licence to provide a local radio multiplex service and a licence to provide a national radio multiplex service respectively;

[<sup>F320</sup>“radio multiplex licence” means a licence to provide a radio multiplex service;]

[<sup>F321</sup>“radio multiplex service” means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003;

“the radio transfer date” has the same meaning as in the Communications Act 2003;]

“simulcast radio service” has the meaning given by section 41(2);

“technical service” has the meaning given by section 63(3).

[<sup>F322</sup>“television licensable content service” has the meaning given by section 232 of the Communications Act 2003;]

[<sup>F323</sup>“television multiplex service” has the meaning given by section 241 of the Communications Act 2003.]

(2) Any reference in this Part to an area in the United Kingdom does not include an area which comprises or includes the whole of England; and nothing in this Part shall be read as precluding a local radio multiplex service from being provided for an area or

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locality that is to any extent comprised in the area or locality for which another local radio multiplex service is to be provided.

- (3) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

#### Textual Amendments

- F318** Words in s. 72(1) 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)
- F319** Words in s. 72(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 260\(4\)\(a\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F320** Words in s. 72(1) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 36\(2\)](#), 47(1)
- F321** Words in s. 72(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 126](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F322** Words in s. 72(1) inserted (25.7.2006) by [The Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), [5\(11\)](#)
- F323** Words in s. 72(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 260\(4\)\(b\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## PART III

### AMENDMENTS OF THE BROADCASTING ACT 1990

#### *Restrictions on holding of licences*

#### 73 Restrictions on holding of licences.

Schedule 2 (which makes amendments of the 1990 Act relating to restrictions on the holding of licences under that Act or under Part I or II) shall have effect.

#### Commencement Information

- I3** [S. 73](#) wholly in force at 1.4.1997; [s. 73](#) in force for certain purposes at 24.7.1996 see [s. 149\(1\)](#); [s. 73](#) in force at 1.4.1997 insofar as not already in force by [S.I. 1997/1005](#), [art. 4](#)

#### *Regional Channel 3 services*

#### <sup>F324</sup>74 Provision of news programmes by holders of regional Channel 3 licences.

.....

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**Textual Amendments**

**F324** Ss. 74-76 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)

**F324**<sup>75</sup> **Appointment of news provider by holders of regional Channel 3 licences.**

.....

**Textual Amendments**

**F324** Ss. 74-76 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)

**F324**<sup>76</sup> **Nomination by Commission for purposes of section 31(2) of Broadcasting Act 1990.**

.....

**Textual Amendments**

**F324** Ss. 74-76 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)

**77** **Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.**

(1) After section 194 of the 1990 Act there is inserted—

**“194A Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.**

- (1) In this section a “relevant agreement” means an agreement—
- (a) which is made between all holders of regional Channel 3 licences for securing the appointment by them, in accordance with conditions included in their licences by virtue of section 31A(a), of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
  - (b) which is made between them and the body corporate appointed to be the appointed news provider for the purposes of section 31(2) for purposes connected with the appointment.
- (2) If a relevant agreement is registered under the <sup>M1</sup>Restrictive Trade Practices Act 1976 (“the 1976 Act”), the Director General of Fair Trading shall report to the Secretary of State as to whether it appears to the Director that the agreement falls within subsection (4).
- (3) If, on receiving a report under subsection (2), it appears to the Secretary of State that the agreement falls within subsection (4), he may give a direction to the Director requiring him not to make an application to the Restrictive

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Practices Court under Part I of the 1976 Act in respect of the relevant agreement.

- (4) A relevant agreement falls within this subsection if—
  - (a) those provisions of the agreement by virtue of which the 1976 Act applies to the agreement do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, or
  - (b) all or any of those provisions have, or are intended or likely to have, that effect to a significant extent, but that the effect is not greater than is necessary—
    - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
    - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).
- (5) The Secretary of State may vary or revoke any direction given under subsection (3) above if he satisfied that there has been a material change of circumstances such that—
  - (a) the grounds for the direction have ceased to exist, or
  - (b) there are grounds for giving a different direction;
 and where the Secretary of State so varies or revokes any direction, he shall give notice of the variation or revocation to the Director.
- (6) In this section—
  - (a) “agreement” and “Director” have the same meaning as in the 1976 Act, and
  - (b) “regional Channel 3 licence” has the same meaning as in Part I.”

F325(2) .....

**Textual Amendments**  
 F325 S. 77(2) repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 21, Sch. 14 Pt. I (with s. 73); S.I. 2000/344, art. 2

**Marginal Citations**  
 M1 1976 c. 34.

F326 78 Variation of regional Channel 3 licence following change of control.

.....

**Textual Amendments**  
 F326 S. 78 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)

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**F327 79 Powers of Commission in relation to modification or replacement of networking arrangements.**

.....

**Textual Amendments**

**F327** S. 79 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)

*Channel 4 and S4C*

**80 Funding of Sianel Pedwar Cymru.**

(1) For section 61 of the 1990 Act there is substituted—

**“61 Funding of Welsh Authority.**

- (1) The Secretary of State shall, in the year 1998 and in each subsequent year, pay to the Welsh Authority the prescribed amount as increased by the appropriate percentage.
- (2) In this section “the prescribed amount” means the 1997 amount or such amount as may from time to time be prescribed under subsection (4).
- (3) In this section “the 1997 amount” means the amount paid by the Secretary of State to the Welsh Authority by way of interim payment for the year 1997 (under this section as originally enacted).
- (4) The Secretary of State may, if he is satisfied that it is appropriate to do so having regard to the cost to the Welsh Authority of transmitting S4C and the service referred to in section 57(1A)(a), by order provide that the prescribed amount is to be an amount which is greater than the 1997 amount and is specified in the order.
- (5) Before making an order under subsection (4) the Secretary of State shall consult the Welsh Authority.
- (6) In this section “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 November 1996, 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” has the same meaning as in section 19(10).
- (7) Any sums required by the Secretary of State under this section shall be paid out of money provided by Parliament.
- (8) An order shall not be made under subsection (4) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.”

(2) In section 62 of the 1990 Act for “sections 26 and 61” there is substituted “ section 26 ”.

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- (3) Subsections (1) and (2) shall not have effect in relation to payments for any year before 1998.
- (4) No payment shall be made to or by the Welsh Authority under subsection (3) or (4) of section 61 of the 1990 Act (as originally enacted) for the year 1997; and in this subsection “the Welsh Authority” has the same meaning as in the 1990 Act.

## **81 Public service fund of Sianel Pedwar Cymru.**

- (1) After section 61 of the 1990 Act there is inserted—

### **“61A Welsh Authority public service fund.**

- (1) The Welsh Authority shall not exercise their powers under section 57(1A)(b) before such date (in this section referred to as “the notified date”) as they may notify to the Secretary of State for the purposes of this section.
  - (2) All amounts received by the Welsh Authority under section 61 on or after the notified date shall be kept by the Authority in a separate fund (in this section referred to as “the public service fund”) which may be applied only for the purposes of their functions under section 57(1) or (1A)(a).
  - (3) No S4C company shall receive any direct or indirect subsidy from the public service fund.
  - (4) The Welsh Authority shall secure that no television programme which has been wholly or partly financed out of the public service fund is included in a television programme service provided by an S4C company before it is first broadcast on S4C or in the service referred to in section 57(1A)(a).
  - (5) On the notified date—
    - (a) all the assets then held by the Welsh Authority other than cash, together with the appropriate proportion of any cash then held by them, shall be taken to be comprised in the public service fund, and
    - (b) the remainder of any cash then held by the Authority shall be taken to be comprised in a general fund.
  - (6) In subsection (5)(a) “the appropriate proportion” means the proportion which, in the last financial year in respect of which a statement of accounts has been prepared under paragraph 12(1) of Schedule 6 before the notified date, the total amount received by the Welsh Authority under section 61 bears to the total amount of its income from all sources.”
- (2) In paragraph 12 of Schedule 6 of the 1990 Act (accounts and audit) after subparagraph (1) there is inserted—
    - “(1A) The statement of accounts must deal separately with the public service fund referred to in section 61A of this Act and with the general fund referred to in subsection (5)(b) of that section.”.



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PROSPECTIVE

<sup>F328</sup>**82 Multiplex revenue to be taken into account in connection with funding of Channel Four Television Corporation.**

.....

**Textual Amendments**

**F328** Ss. 82-84 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)

<sup>F328</sup>**83 Application of excess revenues of Channel Four Television Corporation.**

.....

**Textual Amendments**

**F328** Ss. 82-84 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)

<sup>F328</sup>**84 Extension of powers of Channel Four Television Corporation and Sianel Pedwar Cymru.**

.....

**Textual Amendments**

**F328** Ss. 82-84 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)

*Miscellaneous amendments relating to television broadcasting*

**85 Restricted television services.**

After section 42 of the 1990 Act there is inserted—

**“CHAPTER IIA**

**RESTRICTED SERVICES**

**42A Restricted services.**

In this Part “restricted service” means a service which—

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- (a) consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom, and
- (b) is provided on a frequency or frequencies assigned to the Commission under section 65.

#### **42B Licensing etc. of restricted services.**

- (1) An application for a licence to provide a restricted service shall be made in such manner as the Commission may determine, and shall be accompanied by such fee (if any) as the Commission may determine.
- (2) Subject to subsections (3) and (4), sections 40 to 42 shall apply in relation to such a licence as they apply in relation to a licence to provide a Channel 3 service.
- (3) In its application to a licence to provide a restricted service, section 41 shall have effect with the omission of subsection (2); and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section shall not exceed whichever is the greater of—
  - (a) £50,000, and
  - (b) the amount determined under subsection (4).
- (4) The amount referred to in subsection (3)(b) is—
  - (a) in a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (“the relevant period”), 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) in any other case, 5 per cent. of the qualifying revenue for that accounting period (as so determined);
 and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).”

#### **86 Award of certain licences subject to conditions.**

- (1) After section 17 of the 1990 Act there is inserted—

##### **“17A Award of Channel 3 licence subject to conditions.**

- (1) The Commission may, when awarding a Channel 3 licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
  - (a) any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and

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- (b) any information provided to them under section 15(3)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where the Commission determine that any condition imposed by them in relation to a Channel 3 licence in pursuance of subsection (1) has not been satisfied, section 17 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 17 shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence.”
- (2) In section 51 of the 1990 Act (procedure to be followed by Commission in connection with consideration of applications for, and awarding of, licences to provide additional services), in subsection (3)—
  - (a) for “section 17” there is substituted “ sections 17 and 17A ”, and
  - (b) for “it applies” there is substituted “ they apply ”.

F329(3) .....

**Textual Amendments**

F329 S. 86(3) 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)

F330<sup>87</sup> **Ancillary services.**

.....

**Textual Amendments**

F330 Ss. 87-90 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)

F330<sup>88</sup> **Enforcement of licences to provide non-domestic satellite services.**

.....

**Textual Amendments**

F330 Ss. 87-90 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)

F330<sup>89</sup> **Power of Independent Television Commission to suspend licence to provide non-domestic satellite service.**

.....

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**Textual Amendments**

**F330** Ss. 87-90 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)

**F330** **90 Enforcement of licences to provide licensable programme services.**

.....

**Textual Amendments**

**F330** Ss. 87-90 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)

**F331** **91 Certain delivery services to carry certain broadcasts.**

.....

**Textual Amendments**

**F331** S. 91 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)

*Sound broadcasting*

**92 Renewal of licences to provide national radio services.**

After section 103 of the 1990 Act there is inserted—

**“103A Renewal of national licences.**

- (1) A national licence may (subject to the following provisions of this section) be renewed on one occasion for a period of eight years beginning with the date of renewal.
- (2) An application for the renewal of a national licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) Where any such application is made before the relevant date—
  - (a) if no simulcast radio service provided by the applicant is being broadcast in digital form when the application is made, the Authority shall postpone the consideration of the application until the relevant date or, if earlier, the date on which the broadcasting of such a service in that form begins, and
  - (b) in any other case, the Authority may postpone the consideration of the application for so long as they think appropriate having regard to subsection (8).

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- (4) Where an application for the renewal of a national licence has been duly made to the Authority, they shall (subject to subsection (5)) grant the application if, but only if—
- (a) the Authority are satisfied that the applicant would, if his licence were renewed, provide a national service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section),
  - (b) the applicant has given notice to the Authority under section 41(2)(a) of the Broadcasting Act 1996 of his intention to provide a service for broadcasting in digital form, and
  - (c) a simulcast radio service provided by the applicant is being broadcast in digital form or the Authority are satisfied that by the relevant date the applicant has done all that it would in the circumstances be reasonable to expect him to do by that date to procure the broadcasting of such a service within such time as the Authority consider reasonable.
- (5) Section 100(4) to (6) shall apply in relation to an applicant for the renewal of a national licence as those provisions apply in relation to such an applicant as is mentioned in section 100(4), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any application under this section the Authority—
- (a) may, in a case where a simulcast radio service provided by the applicant is not yet being broadcast in digital form on the relevant date, determine a date by which the broadcasting of such a service in that form must begin;
  - (b) shall determine an amount which is to be payable to the Authority by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (c) may specify a different percentage from that specified under section 98(1)(d)(ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 102(1)(c) during the period for which the licence is to be renewed.
- (7) The amount determined by the Authority under subsection (6)(b) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 102(1)(a) if they were granting a fresh licence to provide the national service in question.
- (8) Where the Authority have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable (whether because subsection (3)(a) precluded the consideration of the application before that date or for any other reason), as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (6)(a),
  - (b) the amount determined by them under subsection (6)(b), and
  - (c) any percentage specified by them under subsection (6)(c),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.

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*Status: Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Broadcasting Act 1996 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (9) Where a national licence has been renewed under this section—
- (a) any conditions included in it in pursuance of section 102 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Authority under subsection (6)(b) were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (6)(c);
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a national licence is originally in force;
  - (c) where the Authority have determined a date under subsection (6)(a), they shall include in the licence as renewed a condition requiring a simulcast radio service to be broadcast in digital form throughout the period beginning with the date determined under subsection (6)(a) and ending with the date on which the licence (as renewed) is to expire; and
  - (d) the reference in section 111(4) to the end of the period for which a national licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.
- (10) Subsections (6)(a) and (9)(c) do not prejudice the generality of section 48(3)(b) of the Broadcasting Act 1996 (power to vary national licence to include conditions relating to digital broadcasting).
- (11) In this section—
- “simulcast radio service” has the same meaning as in Part II of the Broadcasting Act 1996;
- “the relevant date”, in relation to a national licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 98(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the national service formerly provided under that licence.”

**F332<sup>93</sup> Variation of local radio licence following change of control.**

.....

**Textual Amendments**

**F332** S. 93 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)

**94 Renewal of licences to provide local radio services.**

- (1) After section 104 of the 1990 Act there is inserted—

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#### “104A Renewal of local licences.

- (1) A local licence may (subject to the following provisions of this section) be renewed on one occasion for a period of eight years beginning with the date of renewal.
- (2) No application for the renewal of a local licence under subsection (1) may be made before the Authority first publish a notice pursuant to section 50(2) of the Broadcasting Act 1996 inviting applications for a licence to provide a relevant local radio multiplex service.
- (3) Subject to subsection (2), an application for the renewal of a local licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (4) The applicant must, in his application or at any time before the consideration of his application, nominate—
  - (a) a local digital sound programme service provided or to be provided by him, and
  - (b) a relevant local radio multiplex service,but may not nominate together a local digital sound programme service and a local radio multiplex service if another local licence held by him includes a condition in pursuance of subsection (12) relating to the broadcasting of that local digital sound programme service by that local radio multiplex service.
- (5) Where an application for the renewal of a local licence has been duly made to the Authority, they shall grant the application if—
  - (a) they are satisfied that the applicant would, if his licence were renewed, provide a local service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section), and
  - (b) the nominated local digital sound programme service provided by the applicant is being broadcast by means of the nominated local radio multiplex service.
- (6) Where the condition specified in subsection (5)(a) is satisfied, the Authority may grant the application even though the condition specified in subsection (5)(b) is not satisfied if—
  - (a) the applicant holds a licence to provide local digital sound programme services,
  - (b) a licence to provide the nominated local radio multiplex service has been awarded, and
  - (c) it appears to the Authority that, under a contract between the applicant and the person to whom that licence has been awarded, the applicant is obliged to provide the nominated local digital sound programme service for broadcasting by means of the nominated local radio multiplex service.
- (7) The Authority may in any case postpone consideration of the application until the relevant date.

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- (8) If, at the relevant date, the condition specified in subsection (5)(b) is not satisfied, and any of the conditions specified in subsection (6) is not satisfied, the Authority may postpone consideration of the application for such period not exceeding twelve months as they think appropriate.
- (9) Where the Authority postpone consideration of an application under this section for any period beyond the relevant date (the “postponement period”), they shall extend the period for which the licence is in force by a period equal to the postponement period; and section 86(3) shall not limit the powers of the Authority under this subsection.
- (10) On the grant of any application under this section the Authority shall—
- (a) where the nominated local digital sound programme service provided by the applicant is not being broadcast by means of the nominated local radio multiplex service, determine a date by which that service must have begun to be so broadcast; and
  - (b) specify a fee payable to the Authority in respect of the renewal.
- (11) Where the Authority have granted a person’s application under this section they shall formally renew his licence as soon afterwards as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (10)(a), and
  - (b) the renewal fee specified by them under subsection (10)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (12) Where the Authority renew a licence under this section they shall include in the licence as renewed a condition requiring the licence holder to do all that he can to ensure that the nominated local digital sound programme service is broadcast by means of the nominated local radio multiplex service throughout the period beginning with whichever is the later of—
- (a) the date on which the licence would expire if not renewed, and
  - (b) any date determined by them under subsection (10)(a),
- and ending with the date on which the licence (as renewed) is to expire.
- (13) In this section—
- (a) “local digital sound programme service” has the same meaning as in Part II of the Broadcasting Act 1996;
  - (b) “nominated” means nominated by the applicant under subsection (4);
  - (c) “relevant date”, in relation to a local licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 104(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the local service formerly provided under that licence; and
  - (d) “relevant local radio multiplex service”, in relation to a local licence, means a local radio multiplex service (within the meaning of Part II of the Broadcasting Act 1996) with a coverage area which to a significant extent includes the coverage area of the local service provided under the local licence; and for this purpose “coverage area”, in relation to a service, has the meaning given by paragraph 3A of Part I of Schedule 2.



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### **104B Special application procedure for local licences.**

- (1) Where—
  - (a) a local licence is due to expire (otherwise than by virtue of section 110),
  - (b) the local service provided under the licence falls within category B, C or D of the Table in paragraph 9 of Part III of Schedule 2, and
  - (c) the Authority propose to grant a further licence to provide the service in question,the Authority may if they think fit publish a notice under subsection (2) instead of a notice under section 104(1).
- (2) A notice under this subsection is a notice—
  - (a) stating that the Authority propose to grant a further licence to provide a specified local service,
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided,
  - (c) inviting declarations of intent to apply for a licence to provide the service,
  - (d) specifying the closing date for such declarations, and
  - (e) specifying—
    - (i) the application fee payable on any declaration made in pursuance of the notice, and
    - (ii) a deposit of such amount as the Authority may think fit.
- (3) A declaration of intent made in pursuance of a notice under subsection (2) must be in writing and accompanied by the application fee and deposit specified under subsection (2)(e)(i) and (ii).
- (4) Where the Authority receive a declaration of intent in accordance with the provisions of this section from a person other than the licence holder in relation to the service in question, they shall—
  - (a) publish a notice under section 104(1),
  - (b) specify—
    - (i) in relation to persons who have made a declaration of intent in accordance with the provisions of this section, no further application fee, and
    - (ii) in relation to all other applicants, an application fee of the same amount as the fee referred to in subsection (2)(e)(i), and
  - (c) repay the deposit referred to in subsection (2)(e)(ii) to every person—
    - (i) who has made a declaration of intent in accordance with the provisions of this section, and
    - (ii) who duly submits an application in pursuance of the notice referred to in paragraph (a).
- (5) Where the Authority receive a declaration of intent in accordance with the provisions of this section from the licence holder in relation to the service in question, and no such declaration from any other person, they shall—

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- (a) invite the licence holder to apply for the licence in such manner as they may determine (but without requiring any further application fee), and
  - (b) on receiving an application duly made by him, repay to him the deposit referred to in subsection (2)(e)(ii).
- (6) The Secretary of State may by order amend subsection (1) by removing any of the categories of local service for the time being specified in that subsection, or by substituting for any of such categories any one or more categories of local service set out in the Table in paragraph 9 of Part III of Schedule 2.
- (7) Any order under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 104 of the 1990 Act (applications for licences other than national licences), subsections (5) and (6)(a) shall cease to have effect.

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

- C40** S. 94 extended to Guernsey (12.5.1999) by [S.I. 1999/1314, art. 2](#)
- S. 94 extended to Jersey (12.5.1999) by [S.I. 1999/1315, art. 2](#)

**95 Financing of Gaelic sound programmes.**

- (1) Section 183 of the 1990 Act (financing of television programmes in Gaelic out of Gaelic Television Fund) is amended as mentioned in subsections (2) to (6).
- (2) In subsection (2), for “Gaelic Television Fund” there is substituted “ Gaelic Broadcasting Fund ”.

- F333(3) .....
- F333(4) .....
- F333(5) .....
- F333(6) .....
- F333(7) .....

**Textual Amendments**

- F333** S. 95(3)-(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](#))

**96 Power of Radio Authority to suspend licence to provide satellite service.**

After section 111A of the 1990 Act there is inserted—

**“111B Power to suspend licence to provide satellite service.**

- (1) If the Authority are satisfied—

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- (a) that the holder of a licence to provide a satellite service has included in the service one or more programmes containing material likely to encourage or incite to crime or to lead to disorder,
  - (b) that he has thereby failed to comply with the condition included in the licence in pursuance of section 90(1)(a), and
  - (c) that the failure is such as to justify the revocation of the licence,
- they shall serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
    - (a) stating that the Authority are satisfied as mentioned in subsection (1),
    - (b) specifying the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned in paragraph (b) of that subsection,
    - (c) stating that the Authority may revoke his licence after the end of the period of twenty-one days beginning with the date on which the notice is served on the licence holder,
    - (d) informing the licence holder of his right to make representations to the Authority within that period about the matters complained of, and
    - (e) suspending the licence as from the time when the notice is served on the licence holder until the revocation takes effect or the Authority decide not to revoke the licence.
  - (3) If the Authority, having considered any representations about the matters complained of made to them within the period referred to in subsection (2)(c) by the licence holder, are satisfied that it is necessary in the public interest to revoke the licence in question, they shall serve on the licence holder a notice revoking the licence.
  - (4) A notice under subsection (3) shall not take effect until the end of the period of twenty-eight days beginning with the day on which that notice was served on the licence holder.
  - (5) Section 111 shall not have effect in relation to the revocation of a licence in pursuance of a notice under subsection (1).”

## PART IV

### SPORTING AND OTHER EVENTS OF NATIONAL INTEREST

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

- C41** Pt. 4: functions transferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 13](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C42** Pt. 4 modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 51\(1\)\(2\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## 97 Listed events.

- (1) For the purposes of this Part, a listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State for the purposes of this Part.

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- (2) The Secretary of State shall not at any time draw up, revise or cease to maintain such a list as is mentioned in subsection (1) unless he has first consulted—
- (a) the BBC,
  - (b) the Welsh Authority,
  - (c) the Commission, and
  - (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired;
- and for the purposes of this subsection a relevant event is a sporting or other event of national interest which the Secretary of State proposes to include in, or omit from, the list.
- (3) As soon as he has drawn up or revised such a list as is mentioned in subsection (1), the Secretary of State shall publish the list in such manner as he considers appropriate for bringing it to the attention of—
- (a) the persons mentioned in subsection (2), and
  - (b) every person who is the holder of a licence granted <sup>F334</sup>... under Part I of the 1990 Act or a digital programme licence granted <sup>F334</sup>... under Part I of this Act.
- (4) In this section “national interest” includes interest within England, Scotland, Wales or Northern Ireland.
- (5) The addition of any relevant event to such a list as is mentioned in subsection (1) shall not affect—
- (a) the validity of any contract entered into before the date on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed addition, or
  - (b) the exercise of any rights acquired under such a contract.
- (6) The list drawn up by the Secretary of State for the purposes of section 182 of the 1990 Act, as that list is in force immediately before the commencement of this section, shall be taken to have been drawn up for the purposes of this Part.

#### **Textual Amendments**

**F334** Words in s. 97(3)(b) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 299(2), 411(2), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

**C43** S. 97(2) excluded (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 51\(5\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**C44** S. 97(2)(c) modified (temp.) (8.12.2003) by [The Office of Communications Act 2002](#) (Commencement No. 3) and [Communications Act 2003 \(Commencement No. 2\) Order 2003 \(S.I. 2003/3142\)](#), [art. 10\(2\)](#) (with art. 11)

#### **[<sup>F335</sup>98 Categories of service.**

- (1) For the purposes of this Part, television programme services and EEA satellite services shall be divided into two categories as follows—
- (a) those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions, and

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- (b) all other television programme services and EEA satellite services.
- (2) In this section “the qualifying conditions”, in relation to a service, means the conditions—
- (a) that the service is provided without any consideration being required for reception of the service, and
  - (b) that the service is received by at least 95 per cent. of the population of the United Kingdom.
- (3) There shall be disregarded for the purposes of subsection (2)(a) any fee payable in respect of a [<sup>F336</sup>licence for the purposes of section 363 of the Communications Act 2003].
- (4) The condition in subsection (2)(b)
- (a) is to be taken to be satisfied in relation to a regional Channel 3 service if it is satisfied in relation to Channel 3 as a whole, and
  - (b) is to be taken to be satisfied in relation to Channel 4 if it is satisfied in relation to Channel 4 and S4C taken together.
- (5) [<sup>F337</sup>OFCOM] shall from time to time publish a list of the television programme services and EEA satellite services which appear to them to satisfy the qualifying conditions.
- [ The Secretary of State may, by regulations made by statutory instrument, amend the <sup>F338</sup>(5A) percentage figure specified for the time being in subsection (2)(b).
- (5B) An amendment made by regulations under this section does not affect—
- (a) the validity of any contract entered into before the regulations came into force, or
  - (b) the exercise of any rights acquired under such a contract.
- (5C) Regulations under subsection (5A) may make transitional, transitory or saving provision.
- (5D) A statutory instrument containing regulations under subsection (5A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.]
- (6) In this section “EEA satellite service” means any service which—
- (a) consists in the [<sup>F339</sup>broadcasting of television programmes from a satellite so as to be available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003)] , and
  - (b) is provided by a person who for the purposes of [<sup>F340</sup>the Audiovisual Media Services Directive] is under the jurisdiction of an EEA State other than the United Kingdom.]

#### Textual Amendments

**F335** S. 98 substituted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 1 (with reg. 4(2))

**F336** Words in s. 98(3) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 127(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F337** Words in s. 98(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 127(3) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F338** S. 98(5A)-(5D) inserted (27.6.2017) by Digital Economy Act 2017 (c. 30), ss. 97, 118(2)

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- F339** Words in s. 98(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 127\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F340** Words in s. 98(6)(b) substituted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\), regs. 1, 4\(4\)](#)

## 99 Contract for exclusive right to televise listed event to be void.

- (1) Any contract entered into after the commencement of this section under which a television programme provider acquires rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or in any area of the United Kingdom, shall be void so far as it purports, in relation to the whole or any part of the event or in relation to reception in the United Kingdom or any area of the United Kingdom, to grant those rights exclusively to any one television programme provider.
- (2) In this Part “television programme provider” means the BBC, the Welsh Authority or any person who is the holder of any licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act.
- (3) For the purposes of this section rights to televise the whole or any part of an event live for reception in any area granted to a television programme provider are granted exclusively if the person granting them—
  - <sup>F341</sup>(a) has not granted any right to televise the whole or, as the case may be, that part of the event live for reception in that area to any other television programme provider nor to any broadcaster who for the purposes of <sup>F342</sup>[the Audiovisual Media Services Directive] is under the jurisdiction of an EEA State other than the United Kingdom, and]
  - (b) is precluded by the terms of the contract from doing so.

### Textual Amendments

- F341** S. 99(3)(a) substituted (19.1.2000) by [S.I. 2000/54, reg. 3, Sch. para. 2](#)
- F342** Words in s. 99(3)(a) substituted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\), regs. 1, 4\(5\)](#)

## 100 Contract for televising listed event must specify category of service.

- <sup>F343</sup>(1) Any contract entered into after the commencement of this section shall be void so far as it purports to grant to a television programme provider rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or any area of the United Kingdom, unless the contract complies with subsection (2).
- (2) A contract complies with this subsection if the terms of the contract allow the television programme provider to include the live coverage of the listed event—
  - (a) only in a television programme service falling within paragraph (a) of subsection (1) of section 98, or
  - (b) only in a television programme service falling within paragraph (b) of that subsection.

### Textual Amendments

- F343** S. 100(1) restricted (19.1.2000) by [S.I. 2000/54, reg. 4\(1\)](#)

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## 101 Restriction on televising of listed event.

- (1) A [<sup>F344</sup>television programme provider] providing a service falling within either of the categories set out in subsection (1) of section 98 (“the first service”) for reception in the United Kingdom or in any area of the United Kingdom shall not, without the previous consent of [<sup>F345</sup>OFCOM] , include in that service live coverage of the whole or any part of a listed event unless—
- (a) another person, who is providing a service falling within the other category set out in that subsection (“the second service”), has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event, and
  - (b) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided.
- (2) [<sup>F345</sup>OFCOM] may revoke any consent given by them under subsection (1).
- (3) Failure to comply with subsection (1) shall not affect the validity of any contract.
- (4) Subsection (1) shall not have effect where the television programme provider providing the first service is exercising rights acquired before the commencement of this section.

### Textual Amendments

**F344** Words in s. 101(1) substituted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 3 (with reg. 4(2))

**F345** Words in s. 101 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 128 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## [<sup>F346</sup>101A] Designated events in relation to other EEA States.

For the purposes of this Part, a sporting or other event is a designated event, in relation to an EEA State other than the United Kingdom, if—

- (a) that State has designated the event in accordance with [<sup>F347</sup>Article 14(1) of the Audiovisual Media Services Directive] as being of major importance to its society, and
- (b) the designation forms part of measures—
  - (i) which have been notified by that State to the European Commission for the purposes of [<sup>F348</sup>Article 14(2)] of that Directive, and
  - (ii) notice of which has been published by the European Commission in the Official Journal of the Communities.]

### Textual Amendments

**F346** Ss. 101A-101B inserted (19.1.2000) by S.I. 2000/54, reg. 3, Sch. para. 4

**F347** Words in s. 101A substituted (1.10.2013) by The Broadcasting and Communications (Amendment) Regulations 2013 (S.I. 2013/2217), regs. 1, 4(6)(a)

**F348** Words in s. 101A substituted (1.10.2013) by The Broadcasting and Communications (Amendment) Regulations 2013 (S.I. 2013/2217), regs. 1, 4(6)(b)

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**F349 101B Restriction on televising of an event designated by other EEA State.**

- (1) A television programme provider shall not, without the previous consent of [F350OFCOM], exercise rights to televise the whole or part of an event which is a designated event, in relation to an EEA State other than the United Kingdom, for reception in that EEA State or any area of that EEA State, where a substantial proportion of the public in that EEA State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State in accordance with [F351Article 14(1) of the Audiovisual Media Services Directive].
- (2) [F350OFCOM] may revoke any consent given by them under subsection (1).
- (3) Failure to comply with subsection (1) shall not affect the validity of any contract.
- F352(4) . . . . .

**Textual Amendments**

- F349** Ss. 101A-101B inserted (19.1.2000) by S.I. 2000/54, reg. 3, **Sch. para. 4**
- F350** Words in s. 101B substituted (29.12.2003) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 15 para. 128** (with **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)
- F351** Words in s. 101B substituted (1.10.2013) by **The Broadcasting and Communications (Amendment) Regulations 2013 (S.I. 2013/2217)**, regs. 1, **4(7)**
- F352** S. 101B(4) omitted (31.5.2014) by virtue of **The Television Broadcasting Regulations 2014 (S.I. 2014/1184)**, regs. 1, **2**

**102 Power of [F353OFCOM] to impose penalty.**

- (1) If [F353OFCOM] —
    - (a) are satisfied that the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has failed to comply with subsection (1) of section 101 [F354or subsection (1) of section 101B], and
    - (b) are not satisfied that in all the circumstances it would be unreasonable to expect him to have complied with that subsection,
 they may require him to pay, within a specified period, a specified financial penalty to [F353OFCOM].
  - (2) If [F353OFCOM] are satisfied that, in connection with an application for consent under subsection (1) of section 101 [F355or subsection (1) of section 101B], the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has—
    - (a) provided them with information which was false in a material particular, or
    - (b) withheld any material information with the intention of causing [F353OFCOM] to be misled,
 they may require him to pay, within a specified period, a specified financial penalty to [F353OFCOM].
- [F356(2A) Before requiring any person to pay a financial penalty under subsection (1) on the ground that he has failed to comply with subsection (1) of section 101B, [F353OFCOM] shall consult such persons (who may include competent authorities in other EEA States) as appear to [F353OFCOM] to be appropriate.]



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- (3) The amount of any financial penalty imposed on any person under subsection (1) or (2) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.
- (4) In subsection (3)—
  - (a) “the relevant consideration” means an amount determined by [F353OFCOM] as representing so much of any consideration paid by the person on whom the penalty is being imposed as is attributable to the acquisition of the rights to televise the event in question, and
  - (b) “the prescribed multiplier” means such number as the Secretary of State may from time to time by order prescribe.
- (5) An order under subsection (4)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Where [F353OFCOM] receive any amount payable to them by virtue of subsection (1) or (2), that amount shall not form part of the revenues of [F353OFCOM] but shall be paid into the Consolidated Fund.
- (7) Any amount payable by any person to [F353OFCOM] by virtue of subsection (1) or (2) shall be recoverable by them as a debt due to them from that person.

#### Textual Amendments

- F353** Words in s. 102 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 128](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F354** Words in s. 102(1)(a) inserted (19.1.2000) by [S.I. 2000/54, reg. 3, Sch. para. 5\(2\)](#)
- F355** Words in S. 102(2) inserted (19.1.2000) by [S.I. 2000/54, reg. 3, Sch. para. 5\(3\)](#)
- F356** S. 102(2A) inserted (19.1.2000) by [S.I. 2000/54, reg. 3, Sch. para. 5\(4\)](#)

### 103 Report to Secretary of State.

- (1) If [F357OFCOM] —
  - (a) are satisfied that a broadcasting body has failed to comply with subsection (1) of section 101 [F358] or subsection (1) of section 101B], and
  - (b) are not satisfied that in all the circumstances it would be unreasonable to expect the body to have complied with that subsection,they shall make a report on the matter to the Secretary of State.
- (2) If [F357OFCOM] are satisfied that, in connection with an application for consent under subsection (1) of section 101 [F359] or subsection (1) of section 101B], a broadcasting body has—
  - (a) provided them with information which was false in a material particular, or
  - (b) withheld any material information with the intention of causing [F357OFCOM] to be misled,they shall make a report on the matter to the Secretary of State.

[F360(2A) Before reporting to the Secretary of State that a broadcasting body has failed to comply with subsection (1) of section 101B, [F357OFCOM] shall consult such persons (who may include competent authorities in other EEA States) as appear to [F357OFCOM] to be appropriate.]

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(3) In this section “broadcasting body” means the BBC or the Welsh Authority.

#### Textual Amendments

- F357** Words in s. 103 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 128](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F358** Words in s. 103(1)(a) inserted (19.1.2000) by S.I. 2000/54, reg. 3, [Sch. para. 6\(2\)](#)
- F359** Words in s. 103(2) inserted (19.1.2000) by S.I. 2000/54, reg. 3, [Sch. para. 6\(3\)](#)
- F360** S. 103(2A) inserted (19.1.2000) by S.I. 2000/54, reg. 3, [Sch. para. 6\(4\)](#)

## 104 Code of guidance.

- [<sup>F361</sup>(1) OFCOM shall draw up, and may from time to time revise, a code giving guidance—
- (a) as to the matters which they will take into account in determining whether to give or to revoke their consent for the purposes of section 101(1B) or section 101B(1); and
  - (b) as to the matters which they will take into account in determining for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1) or section 101B(1).]

(2) In exercising their powers under this Part, [<sup>F362</sup>OFCOM] shall have regard to the provisions of the code.

(3) Before drawing up or revising the code [<sup>F362</sup>OFCOM] shall consult such persons as appear to [<sup>F362</sup>OFCOM] to be appropriate.

(4) As soon as [<sup>F362</sup>OFCOM] have drawn up or revised such a code, [<sup>F362</sup>OFCOM] shall publish the code in such manner as they consider appropriate for bringing it to the attention of—

    - (a) the BBC,
    - (b) the Welsh Authority,
    - (c) every person from whom the rights to televise a listed event may be acquired, and
    - (d) every person who is the holder of a licence granted <sup>F363</sup>... under Part I of the 1990 Act or a digital programme licence granted <sup>F363</sup>... under Part I of this Act.

#### Textual Amendments

- F361** S. 104(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 301\(1\)](#), 411(2) (with [Sch. 18 para. 51\(3\)](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F362** Words in s. 104 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 129\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F363** Words in s. 104(4)(d) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 129\(3\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

## [<sup>F364</sup>104ZA] Regulations about coverage of listed events

- (1) OFCOM may make regulations for determining for the purposes of this Part—

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- (a) the circumstances in which the televising of listed events generally, or of a particular listed event, is or is not to be treated as live;
  - (b) what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate alternative coverage; and
  - (c) the requirements that must be satisfied for the purposes of section 101(1C)(d) by persons who have acquired rights to provide adequate alternative coverage.
- (2) The power conferred by subsection (1)(a) does not include power to define “live” for the purposes of section 101B.
- (3) Section 403 of the Communications Act 2003 (procedure for regulations and orders made by OFCOM) applies to the power of OFCOM to make regulations under this section.]

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#### Textual Amendments

**F364** S. 104ZA inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 302\(1\), 411\(2\)](#) (with [Sch. 18 para. 51\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

#### **[<sup>F365</sup>104A] Provision of information.**

- (1) A television programme provider shall, at the request of [<sup>F366</sup>OFCOM], provide them with such information as [<sup>F366</sup>OFCOM] consider appropriate regarding any contract which he has entered into which relates to an event which, in relation to an EEA State other than the United Kingdom, is a designated event.
- (2) If so requested by a competent authority in an EEA State other than the United Kingdom, [<sup>F366</sup>OFCOM] shall provide the authority with such information relating to rights to televise listed events or designated events as [<sup>F366</sup>OFCOM] consider it appropriate to provide.]

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#### Textual Amendments

**F365** S. 104A inserted (19.1.2000) by [S.I. 2000/54](#), [reg. 3](#), [Sch. para. 8](#)

**F366** Words in s. 104A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), [Sch. 15 para. 130](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

#### **105 Interpretation of Part IV and supplementary provisions.**

- (1) In this Part (unless the context otherwise requires)—

[<sup>F367</sup>“adequate alternative coverage” and “live” are to be construed in accordance with any regulations under section 104ZA;]

[<sup>F368</sup>“the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;]

“Channel 4” has the same meaning as in Part I of the 1990 Act;

<sup>F369</sup> ...

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[<sup>F370</sup>“designated event”, in relation to an EEA State other than the United Kingdom, has the meaning given by section 101A;]

[<sup>F371</sup>“EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978;]

“listed event” has the meaning given by section 97(1);

<sup>F369</sup> ...

“national Channel 3 service” and “regional Channel 3 service” have the same meaning as in Part I of the 1990 Act;

[<sup>F372</sup>“S4C” has the same meaning as in Part I of the 1990 Act;]

“television broadcasting service” has the same meaning as in Part I of the 1990 Act;

“television programme provider” has the meaning given by section 99(2);

“television programme service” has the same meaning as in Part I of the 1990 Act.

- (2) Section 182 of the 1990 Act (certain events not to be shown on pay-per-view terms) shall cease to have effect.

#### Textual Amendments

- F367** Words in s. 105(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 302(2)**, 411(2) (with [Sch. 18 para. 51\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F368** Words in s. 105(1) inserted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\)](#), [regs. 1](#), **4(8)(a)**
- F369** Words in s. 105(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), [Sch. 15 para. 131](#), **Sch. 19(1)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F370** S. 105(1) definition of “designated event” inserted (19.1.2000) by [S.I. 2000/54](#), [reg. 3](#), **Sch. para. 9(a)**
- F371** Words in s. 105(1) inserted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\)](#), [regs. 1](#), **4(8)(b)**
- F372** S. 105(1) definition of “S4C” inserted (19.1.2000) by [S.I. 2000/54](#), [reg. 3](#), **Sch. para. 9(c)**

## PART V

### THE BROADCASTING STANDARDS COMMISSION

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

- C45** Pt. 5: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), **Sch. 1 para. 14** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- C46** Pt. 5 modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [s. 411\(2\)](#), **Sch. 18 para. 52** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

#### *Establishment of Broadcasting Standards Commission*

<sup>F373</sup>**106 The Broadcasting Standards Commission.**

.....

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**Textual Amendments**

**F373** S. 106 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)

*Unjust or unfair treatment or unwarranted infringement of privacy*

**107 Preparation by [<sup>F374</sup>OFCOM] of code relating to avoidance of unjust or unfair treatment or interference with privacy.**

- (1) It shall be the duty of [<sup>F374</sup>OFCOM] to draw up, and from time to time review, a code giving guidance as to principles to be observed, and practices to be followed, in connection with the avoidance of—
- (a) unjust or unfair treatment in programmes to which this section applies, or
  - (b) unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.

<sup>F375</sup>(2) . . . . .

- (3) [<sup>F374</sup>OFCOM] shall from time to time publish the code (as for the time being in force).
- (4) Before drawing up or revising the code, [<sup>F374</sup>OFCOM] shall consult—
- (a) each broadcasting <sup>F376</sup>... body, and
  - (b) such other persons as appear to [<sup>F374</sup>OFCOM] to be appropriate.
- (5) This section applies to—
- (a) any programme broadcast by the BBC,
  - (b) any programme broadcast by the Welsh Authority or included in [<sup>F377</sup>any public service of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003)] , and
  - (c) any programme included in a licensed service.

**Textual Amendments**

**F374** Words in s. 107 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\)](#), [Sch. 1](#) (with art. 11)

**F375** S. 107(2) 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)

**F376** Words in s. 107(4)(a) 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)

**F377** Words in s. 107(5)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 15 para. 133](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\)](#), [Sch. 1](#) (with art. 11)

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

**C47** S. 107 applied (27.7.2000) by [S.I. 2000/1864, art. 2](#), [Sch. para. 1](#)

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*Portrayal of violence or sexual conduct etc.*

**F378 108 Preparation by BSC of code relating to broadcasting standards generally.**

.....

**Textual Amendments**

**F378** S. 108 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)

**F379 109 Monitoring by BSC of broadcasting standards.**

.....

**Textual Amendments**

**F379** S. 109 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)

*Complaints*

**110 General functions of [F380OFCOM] in relation to complaints.**

- (1) Subject to the provisions of this Part, it shall be the duty of [F380OFCOM] to consider and adjudicate on complaints which are made to them in accordance with sections 111 and 114 and relate—
  - (a) to unjust or unfair treatment in programmes to which section 107 applies, or
  - (b) to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.

**F381**(2) .....

- (3) In exercising their functions under subsection (1), [F380OFCOM] shall take into account any relevant provisions of the code maintained by them under section 107<sup>F382</sup>...
- (4) In this Part—
  - “a fairness complaint” means a complaint to [F380OFCOM] in respect of any of the matters referred to in subsection (1)(a) and (b),<sup>F383</sup> ...

**Textual Amendments**

**F380** Words in s. 110 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F381** S. 110(2) 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)

**F382** Words in s. 110(3) 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)

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**F383** Words in s. 110(4) 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)

## 111 Complaints of unfair treatment etc.

- (1) A fairness complaint may be made by an individual or by a body of persons, whether incorporated or not, but, subject to subsection (2), shall not be entertained by [<sup>F384</sup>OFCOM] unless made by the person affected or by a person authorised by him to make the complaint for him.
- (2) Where the person affected is an individual who has died, a fairness complaint may be made by his personal representative or by a member of the family of the person affected, or by some other person or body closely connected with him (whether as his employer, or as a body of which he was at his death a member, or in any other way).
- (3) Where the person affected is an individual who is for any reason both unable to make a complaint himself and unable to authorise another person to do so for him, a fairness complaint may be made by a member of the family of the person affected, or by some other person or body closely connected with him (whether as his employer, or as a body of which he is a member, or in any other way).
- (4) [<sup>F384</sup>OFCOM] shall not entertain, or proceed with the consideration of, a fairness complaint if it appears to them that the complaint relates to the broadcasting of the relevant programme, or to its inclusion in a licensed service, on an occasion more than five years after the death of the person affected, unless it appears to them that in the particular circumstances it is appropriate to do so.
- (5) [<sup>F384</sup>OFCOM] may refuse to entertain a fairness complaint if it appears to them not to have been made within a reasonable time after the last occasion on which the relevant programme was broadcast or, as the case may be, included in a licensed service.
- (6) Where, in the case of a fairness complaint, the relevant programme was broadcast or included in a licensed service after the death of the person affected, subsection (5) shall apply as if at the end there were added “within five years (or such longer period as may be allowed by [<sup>F384</sup>OFCOM] in the particular case under subsection (4)) after the death of the person affected”.
- (7) [<sup>F384</sup>OFCOM] may refuse to entertain—
  - (a) a fairness complaint which is a complaint of unjust or unfair treatment if the person named as the person affected was not himself the subject of the treatment complained of and it appears to [<sup>F384</sup>OFCOM] that he did not have a sufficiently direct interest in the subject-matter of that treatment to justify the making of a complaint with him as the person affected, or
  - (b) a complaint made under subsection (2) or (3) by a person other than the person affected or a person authorised by him, if it appears to [<sup>F384</sup>OFCOM] that the complainant’s connection with the person affected is not sufficiently close to justify the making of the complaint by him.

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### Textual Amendments

**F384** Words in s. 111 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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### <sup>F385</sup> 112 Committee to consider fairness complaints.

.....

#### Textual Amendments

**F385** S. 112 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)

### <sup>F386</sup> 113 Complaints relating to taste and decency, etc.

.....

#### Textual Amendments

**F386** S. 113 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)

### 114 Supplementary provisions as to making of complaints of either kind.

- (1) A fairness complaint <sup>F387</sup> ... must be in writing, or in such other form as [<sup>F388</sup>OFCOM] may allow, and must give particulars of the matters complained of.
- (2) The [<sup>F388</sup>OFCOM] shall not entertain, or proceed with the consideration of, a fairness complaint <sup>F389</sup> ... if it appears to them—
  - (a) that the matter complained of is the subject of proceedings in a court of law in the United Kingdom, or
  - (b) that the matter complained of is a matter in respect of which the complainant or <sup>F390</sup> ... the person affected has a remedy by way of proceedings in a court of law in the United Kingdom, and that in the particular circumstances it is not appropriate for [<sup>F388</sup>OFCOM] to consider a complaint about it, or
  - (c) that the complaint is frivolous, or
  - (d) that for any other reason it is inappropriate for them to entertain, or proceed with the consideration of, the complaint.

#### Textual Amendments

**F387** Words in s. 114(1) 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)

**F388** Words in s. 114 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F389** Words in s. 114(2) 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)

**F390** Words in s. 114(2)(b) 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)



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## 115 Consideration of fairness complaints.

- (1) Subject to the provisions of sections 111 and 114, every fairness complaint made to [F391]OFCOM] shall be considered by them either at a hearing or, if they think fit, without a hearing.
- (2) Hearings under this section shall be held in private; and where such a hearing is held in respect of a fairness complaint, each of the following persons shall be given an opportunity to attend and be heard, namely—
  - (a) the complainant,
  - (b) the relevant person,
  - <sup>F392</sup>(c) . . . . .
  - (d) any person not falling within any of paragraphs (a) [F393] or (b) who appears to [F391]OFCOM] to have been responsible for the making or provision of that programme, and
  - (e) any other person who [F391]OFCOM] consider might be able to assist at the hearing.
- (3) Before [F391]OFCOM] proceed to consider a fairness complaint they shall send a copy of it—
  - (a) to the relevant person, and
  - <sup>F394</sup>(b) . . . . .
- (4) Where the relevant person receives from [F391]OFCOM] a copy of the complaint, it shall be the duty of that person, if so required by [F391]OFCOM]—
  - (a) to provide [F391]OFCOM] with a visual or sound recording of the relevant programme or of any specified part of it, if and so far as the relevant person has such a recording in his possession;
  - (b) to make suitable arrangements for enabling the complainant to view or hear the relevant programme, or any specified part of it, if and so far as the relevant person has in his possession a visual or sound recording of it;
  - (c) to provide [F391]OFCOM] and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the relevant person is able to do so;
  - (d) to provide [F391]OFCOM] and the complainant with copies of any documents in the possession of the relevant person, being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint;
  - <sup>F395</sup>(da) to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the relevant person, as may be specified or described by OFCOM;]
  - (e) to furnish to [F391]OFCOM] and the complainant a written statement in answer to the complaint.
- (5) Where the relevant person receives from [F391]OFCOM] a copy of a fairness complaint, it shall also be the duty of that person, if so required by [F391]OFCOM]—
  - (a) where the relevant person is a broadcasting body, to arrange for one or more of the governors, members or employees of the body to attend [F391]OFCOM] and assist them in their consideration of the complaint, or
  - (b) where the relevant person is a body other than a broadcasting body, to arrange for one or more of the following, namely—
    - (i) the persons who take part in the management or control of the body, or

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- (ii) the employees of the body,  
to attend [F391OFCOM] and assist them in their consideration of the complaint,  
or
  - (c) where the relevant person is an individual, to attend, or to arrange for one or more of his employees to attend, [F391OFCOM] and assist them in their consideration of the complaint.
- (6) Where the relevant person receives from [F391OFCOM] a copy of a fairness complaint and, in connection with the complaint, [F391OFCOM] make to any other person a request to which this subsection applies, it shall be the duty of the relevant person to take such steps as he reasonably can to ensure that the request is complied with.
- (7) Subsection (6) applies to the following requests by [F391OFCOM] to any such other person as is there mentioned, namely—
- (a) a request to make suitable arrangements for enabling the complainant and any member or employee of [F391OFCOM] to view or hear the relevant programme, or any specified part of it, if and so far as the person requested has in his possession a visual or sound recording of it;
  - (b) a request to provide [F391OFCOM] and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the person requested is able to do so;
  - (c) a request to provide [F391OFCOM] and the complainant with copies of any documents in the possession of the person requested, being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint;
  - [F396](ca) a request to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the person requested, as may be specified or described by OFCOM;]
  - (d) a request to furnish to [F391OFCOM] and the complainant a written statement in answer to the complaint;
  - (e) a request to attend, or (where the person requested is not an individual) to arrange for a representative to attend, [F391OFCOM] and assist them in their consideration of the complaint.
- (8) Where [F391OFCOM] have adjudicated on a fairness complaint, [F397OFCOM shall send a copy of] their findings to the complainant.
- (9) In this section “the relevant person” means—
- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body, and
  - (b) in a case where the relevant programme was included in a licensed service, the licence holder providing the service.

#### Textual Amendments

**F391** Words in s. 115 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F392** S. 115(2)(c) 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](#))

**F393** Words in s. 115(2)(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 134\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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- F394** S. 115(3)(b) 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)
- F395** S. 115(4)(da) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 327\(3\)\(a\)](#), 411(2) (with s. 327(2), [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F396** S. 115(7)(ca) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 327\(3\)\(b\)](#), 411(2) (with s. 327(2), [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F397** Words in s. 115(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 134\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F398** **116 Consideration of standards complaints.**

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**Textual Amendments**

- F398** S. 116 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)

**117 Duty to retain recordings.**

For the purposes of [<sup>F399</sup>section 115] of this Act and of section 167 of the 1990 Act (power to make copies of recordings in connection with certain offences) it shall be the duty of each broadcasting body to retain a recording of every television or sound programme which is broadcast by that body—

- (a) where it is of a television programme, during the period of 90 days beginning with the day of the broadcast, and
- (b) where it is of a sound programme, during the period of 42 days beginning with the day of the broadcast.

**Textual Amendments**

- F399** Words in s. 117 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 135](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**118 Power to pay allowances to persons attending hearings.**

[<sup>F400</sup>OFCOM] may, if they think fit, make to any person who attends them in connection with a fairness complaint <sup>F401</sup>... such payments as they think fit by way of travelling allowance or subsistence allowance where expenditure on travelling or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him so to attend.

**Textual Amendments**

- F400** Words in ss. 118-121 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F401** Words in s. 118 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)

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## 119 Publication of <sup>F400</sup>OFCOM]’s findings.

- <sup>F402</sup>(1) Where OFCOM have considered and adjudicated upon a fairness complaint, they may direct the relevant person to publish the matters mentioned in subsection (3) in such manner, and within such period, as may be specified in the directions.]
- (3) Those matters are—
- (a) a summary of the complaint;
  - (b) <sup>F400</sup>OFCOM]’s findings on the complaint or a summary of them;
  - <sup>F403</sup>(c) .....
- (4) References in <sup>F404</sup>subsection (1)] to the publication of any matter are references to the publication of that matter without its being accompanied by any observations made by a person other than <sup>F400</sup>OFCOM] and relating to the complaint.
- (5) The form and content of any such summary as is mentioned in subsection <sup>F405</sup>(3)(a) or (b)] shall be such as may be approved by <sup>F400</sup>OFCOM] .
- (6) A <sup>F406</sup>relevant person] shall comply with any directions given to <sup>F406</sup>him] under this section.
- <sup>F407</sup>(7) The regulatory regime for every licensed service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with every direction given to him under this section.
- (7A) Section 263 of the Communications Act 2003 applies in relation to conditions included by virtue of subsection (7) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act.
- (7B) It is hereby declared that, where—
- (a) OFCOM exercise their powers under this Part to adjudicate upon a fairness complaint or to give a direction under subsection (1), and
  - (b) it appears to them that the matters to which the complaint in question relates consist in or include a contravention of the conditions of the licence for a licensed service,
- the exercise by OFCOM of their powers under this Part is not to preclude the exercise by them of their powers under any other enactment in respect of the contravention.
- (7C) Where OFCOM are proposing to exercise any of their powers in respect of a contravention of a licence condition in a case in which the contravention relates to matters that have been the subject-matter of a fairness complaint—
- (a) OFCOM may have regard, in the exercise of those powers, to any matters considered or steps taken by them for the purpose of adjudicating upon that complaint and to any direction given by them under this section; but
  - (b) steps taken for the purposes of this Part do not satisfy a requirement to give the licence holder in relation to whom those powers are to be exercised a reasonable opportunity, before they are exercised, of making representations to OFCOM.]
- (8) <sup>F400</sup>OFCOM] shall publish, monthly or at such other intervals as they think fit and in such manner as they think fit, reports each containing, as regards every fairness complaint <sup>F408</sup>... which falls within this subsection and has been dealt with by them in the period covered by the report—
- (a) a summary of the complaint and the action taken by them on it,

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- (b) where they have adjudicated on it, a summary of—
    - (i) their findings,
    - (ii) any direction given under subsection (1), or other action taken by them, in relation to the complaint, and
  - (c) where a direction has been given under subsection (1) in relation to the complaint, a summary of any action taken by a broadcasting body<sup>F409</sup>... or the holder of a licence to provide a licensed service in pursuance of the direction.
- (9) A fairness complaint<sup>F410</sup>... made to [F400OFCOM] falls within subsection (8) unless it is one which under section 111(1), (4) or (5)<sup>F410</sup>... or 114(2) they have refused to entertain.
- (10) [F400OFCOM] may, if they think fit, omit from any summary which is included in a report under subsection (8) and relates to a fairness complaint any information which could lead to the disclosure of the identity of any person connected with the complaint in question other than [F411a relevant person]
- (11) The references in subsections (3)(b) and (8)(b) to [F400OFCOM]’s findings on a complaint shall be construed, in relation to a fairness complaint which has been considered by them in two or more parts, as references to their findings on each part of the complaint.

[F412(11A) In this section “relevant person” means—

- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body; and
- (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service.]

<sup>F413</sup>(12) .....

#### Textual Amendments

- F400** Words in ss. 118-121 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 132(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F402** S. 119(1) substituted for s. 119(1)(2) (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 136(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F403** S. 119(3)(c) 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)
- F404** Words in s. 119(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 136(2)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F405** Words in s. 119(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 136(2)(b)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F406** Words in s. 119(6) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 136(2)(c)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F407** S. 119(7)-(7C) substituted for s. 119(7) (29.12.2003) by Communications Act 2003 (c. 21), **ss. 327(4), 411(2)** (with s. 327(2), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F408** Words in s. 119(8) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 136(2)(d), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F409** Words in s. 119(8)(c) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 136(2)(d), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F410** Words in s. 119(9) 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)

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- F411** Words in s. 119(10) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 136\(2\)\(e\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)
- F412** S. 119(11A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 136\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)
- F413** S. 119(12) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 136\(2\)\(f\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

## 120 Reports on action taken voluntarily in response to findings on complaints.

- (1) This section applies where [<sup>F400</sup>OFCOM] have given a direction under section 119(1) in relation to a fairness complaint <sup>F414</sup>....
- [<sup>F415</sup>(2) Where the relevant programme was included in a licensed service, the licence holder shall send to OFCOM a report of any supplementary action taken by him or by any other person responsible for the making or provision of the relevant programme.]
- (3) Where the relevant programme was broadcast by a broadcasting body, that body shall send to [<sup>F400</sup>OFCOM] a report of any supplementary action taken by—
- (a) the broadcasting body, or
  - (b) any other person appearing to that body to be responsible for the making or provision of the relevant programme.
- (4) [<sup>F400</sup>OFCOM] may include, in any report under section 119(8), a summary of any report received by them under subsection (2) or (3) in relation to the complaint.
- (5) In this section “supplementary action”, in relation to a complaint, means action which, although not taken in pursuance of a direction under section 119(1), is taken in consequence of the findings of [<sup>F400</sup>OFCOM] on the complaint.

### Textual Amendments

- F400** Words in ss. 118-121 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)
- F414** Words in s. 120(1) 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 \(with art. 11\)](#)
- F415** S. 120(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 327\(5\), 411\(2\)](#) (with s. 327(2), [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

## 121 Certain statements etc. protected by qualified privilege for purposes of defamation.

- (1) For the purposes of the law relating to defamation—
- (a) publication of any statement in the course of the consideration by [<sup>F400</sup>OFCOM] of, and their adjudication on, a fairness complaint,
  - (b) publication by [<sup>F400</sup>OFCOM] of directions under section 119(1) relating to a fairness complaint, or
  - (c) publication of a report of [<sup>F400</sup>OFCOM] , so far as the report relates to fairness complaints,
- is privileged unless the publication is shown to be made with malice.
- (2) Nothing in subsection (1) shall be construed as limiting any privilege subsisting apart from that subsection.

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**Textual Amendments**

**F400** Words in ss. 118-121 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 132\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

*Miscellaneous and general*

**<sup>F416</sup>122 Power of BSC to commission research.**

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**Textual Amendments**

**F416** Ss. 122-129 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)

**<sup>F416</sup>123 International representation by BSC of Government interests.**

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**Textual Amendments**

**F416** Ss. 122-129 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)

**<sup>F416</sup>124 Duty to publicise BSC.**

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**Textual Amendments**

**F416** Ss. 122-129 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)

**<sup>F416</sup>125 Annual reports.**

.....

**Textual Amendments**

**F416** Ss. 122-129 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)

**<sup>F416</sup>126 Reports to Secretary of State.**

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#### Textual Amendments

**F416** Ss. 122-129 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)

### <sup>F416</sup>127 Contributions towards cost of BSC.

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#### Textual Amendments

**F416** Ss. 122-129 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)

### <sup>F416</sup>128 Transfer of assets of Broadcasting Complaints Commission and Broadcasting Standards Council to BSC and dissolution of those bodies.

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#### Textual Amendments

**F416** Ss. 122-129 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)

### <sup>F416</sup>129 Transitional provisions relating to complaints.

.....

#### Textual Amendments

**F416** Ss. 122-129 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)

## 130 Interpretation of Part V.

(1) In this Part (unless the context otherwise requires)—

<sup>F417</sup> ...

“broadcasting body” means the BBC or the Welsh Authority;

<sup>F417</sup> ...

“fairness complaint” has the meaning given by section 110(4);

<sup>F417</sup> ...

“licensed service” means<sup>F417</sup> ...—

- (a) any television programme service (within the meaning of Part I of the 1990 Act) which is licensed under that Part,
- (aa) [<sup>F418</sup> the public teletext service,
- (b) any relevant independent radio service (within the meaning of section 85 of the 1990 Act),



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- (c) any additional service (within the meaning of Part 1 of the 1990 Act) which is licensed under that Part,]
- (d) any digital programme service (within the meaning of Part I of this Act) which is licensed under that Part,
- (e) any qualifying service (within the meaning of Part I of this Act) provided by a person other than the Welsh Authority,
- (f) any digital sound programme service (within the meaning of Part II of this Act) which is licensed under that Part,
- (g) any simulcast radio service (within the meaning of Part II of this Act), and
- (h) any digital additional service (within the meaning of Part I or II of this Act) which is licensed under that Part;

F417 ...

“participant”, in relation to a programme, means a person who appeared, or whose voice was heard, in the programme;

“the person affected”—

- (a) in relation to any such unjust or unfair treatment as is mentioned in section 110(1), means a participant in the programme in question who was the subject of that treatment or a person who, whether such a participant or not, had a direct interest in the subject-matter of that treatment, and

- (b) in relation to any such unwarranted infringement of privacy as is so mentioned, means a person whose privacy was infringed;

“programme” includes an advertisement and a teletext transmission and, in relation to a service, includes any item included in that service;

F417 ...

“the relevant programme”, in relation to a complaint, means the programme to which the complaint relates;

F417 ...

F417 ...

“unjust or unfair treatment” includes treatment which is unjust or unfair because of the way in which material included in a programme has been selected or arranged.

(2) In this Part—

- (a) any reference to programmes to which section 107 applies shall be construed in accordance with section 107(5),<sup>F419</sup> ...

<sup>F419</sup>(b) .....

**Textual Amendments**

**F417** Words in s. 130(1) 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)

**F418** Words in s. 130(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 137](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F419** S. 130(2)(b) and word 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)

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## PART VI

### THE BRITISH BROADCASTING CORPORATION

#### *Transfer of property, rights and liabilities relating to BBC transmission network*

#### **131 Power of BBC to make transfer schemes relating to its transmission network.**

- (1) The BBC may make a scheme or schemes providing for the transfer to any person or persons of such property, rights and liabilities of the BBC as are specified in, or determined in accordance with the scheme, being property, rights and liabilities which, immediately before the day on which the scheme comes into force, subsist for the purposes of or in connection with or are otherwise attributable to the BBC transmission network.
- (2) In subsection (1) “the BBC transmission network” means so much of the undertaking of the BBC as is concerned with the provision of broadcasting transmission services or services related to those services.
- (3) In this Part “transfer scheme” means a scheme made under subsection (1).
- (4) Schedule 5 shall have effect with respect to transfer schemes.

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

**C48** [S. 131](#) extended (with modifications) (22.8.1997): to Guernsey by [S.I. 1997/1755, art. 2, Sch.](#); to the Isle of Man by [S.I. 1997/1756, art. 2, Sch.](#); to Jersey by [S.I. 1997/1757, art. 2, Sch.](#)

#### **132 Powers of Secretary of State in relation to transfer schemes.**

- (1) A transfer scheme shall not take effect unless it is approved by the Secretary of State; and where such a scheme is submitted to the Secretary of State for his approval, he may modify the scheme before approving it.
- (2) Subject to subsection (3), the Secretary of State shall not approve a transfer scheme containing any provision in accordance with which any person other than a wholly-owned subsidiary of the BBC becomes entitled or subject to any property, rights and liabilities unless it appears to the Secretary of State that the person has consented to the provisions of the scheme so far as they relate to him.
- (3) Subsection (2) shall not require the consent of any person to so much of a transfer scheme as—
  - (a) relates to property, rights or liabilities to which that person is already entitled or subject, and
  - (b) appears to the Secretary of State to be made for purposes that are no more than supplemental or incidental to the other provisions of the scheme.
- (4) Before—
  - (a) declining to approve a transfer scheme, or
  - (b) modifying such a scheme,
 the Secretary of State shall consult the BBC and every person who is a transferee under the scheme.

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- (5) It shall be the duty of the BBC and every person who is a transferee under a transfer scheme to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on him by this paragraph.
- (6) In this section “wholly-owned subsidiary” has the meaning given by [<sup>F420</sup>section 1159 of the Companies Act 2006] .

#### Textual Amendments

**F420** Words in s. 132(6) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 162(a)** (with art. 10)

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

**C49** S. 132 extended (with modifications) (22.8.1997): to Guernsey by S.I. 1997/1755, art. 2, **Sch.**; to the Isle of Man by S.I. 1997/1756, art. 2, **Sch.**; to Jersey by S.I. 1997/1757, art. 2, **Sch.**

### 133 Agreements with respect to transfer schemes.

- (1) The BBC may enter into any such agreement with another person as they think fit for the purpose of accepting or imposing contractual obligations with respect to, or to anything connected with, the manner in which their powers by virtue of section 131 are to be exercised.
- (2) Any agreement may, in particular, provide for the making of payments, or the issue of shares or securities, to the BBC (by way of consideration or otherwise) in respect of anything created or transferred in accordance with a transfer scheme.
- (3) The consent of the Secretary of State shall be required for the making by the BBC of an agreement under this section.

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

**C50** S. 133 extended (with modifications) (22.8.1997): to Guernsey by S.I. 1997/1755, art. 2, **Sch.**; to the Isle of Man by S.I. 1997/1756, art. 2, **Sch.**; to Jersey by S.I. 1997/1757, art. 2, **Sch.**

### 134 Transfer schemes: successor companies.

Schedule 6 (which makes provision about the accounts etc. of wholly-owned subsidiaries of the BBC to which any property, rights or liabilities are transferred in accordance with a transfer scheme) shall have effect.

### 135 Taxation provisions with respect to transfer schemes.

Schedule 7 (which makes provision about tax in connection with transfer schemes) shall have effect.

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### *Services provided by BBC companies*

#### **136 Services provided by BBC companies.**

Schedule 8 (which makes amendments of the 1990 Act relating to the regulation by the Independent Television Commission and the Radio Authority of services provided by bodies corporate in which the BBC have an interest) shall have effect.

## PART VII

### COPYRIGHT AND RELATED MATTERS

#### **137 Avoidance of certain terms relating to use for purpose of news reporting of visual images from broadcast or cable programme.**

- (1) Any provision in an agreement is void in so far as it purports to prohibit or restrict relevant dealing with a broadcast <sup>F421</sup>... in any circumstances where by virtue of section 30(2) of the <sup>M2</sup>Copyright, Designs and Patents Act 1988 (fair dealing for the purpose of reporting current events) copyright in the broadcast <sup>F421</sup>... is not infringed.
- (2) In subsection (1)—
- [<sup>F422</sup>(a) “relevant dealing”, in relation to a broadcast, means dealing by communicating to the public any visual images taken from that broadcast, and]
- (b) “broadcast” and “[<sup>F423</sup>communicating to the public]” have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988.

#### **Textual Amendments**

**F421** Words in s. 137(1) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 1, [Sch. 2](#) (with regs. 31-40)

**F422** S. 137(2)(a) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 1, [Sch. 1 para. 21\(a\)](#) (with regs. 31-40)

**F423** Words in s. 137(2)(b) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 1, [Sch. 1 para. 21\(b\)](#) (with regs. 31-40)

#### **Marginal Citations**

**M2** 1988 c. 48.

#### <sup>F424</sup>**138 Amendments of Copyright, Designs and Patents Act 1988 relating to cable programme services.**

.....

#### **Textual Amendments**

**F424** S. 138 repealed (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), [ss. 34\(2\)\(b\)](#), 118(6); [S.I. 2017/765](#), reg. 2(n)

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### 139 Copyright licensing.

(1) After section 135G of the Copyright, Designs and Patents Act 1988 there is inserted—

**“135H Power to amend sections 135A to 135G.**

- (1) The Secretary of State may by order, subject to such transitional provision as appears to him to be appropriate, amend sections 135A to 135G so as—
- (a) to include in any reference to sound recordings any works of a description specified in the order; or
  - (b) to exclude from any reference to a broadcast or cable programme service any broadcast or cable programme service of a description so specified.
- (2) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”

(2) After section 151 of that Act there is inserted—

**“151A Award of interest.**

- (1) Any of the following, namely—
- (a) a direction under section 123(3) so far as relating to a licence for broadcasting a work or including a work in a cable programme service;
  - (b) a direction under section 128(3) so far as so relating;
  - (c) an order under section 135D(1); and
  - (d) an order under section 135F confirming or varying an order under section 135D(1),
- may award simple interest at such rate and for such period, beginning not earlier than the relevant date and ending not later than the date of the order, as the Copyright Tribunal thinks reasonable in the circumstances.
- (2) In this section “the relevant date” means—
- (a) in relation to a direction under section 123(3), the date on which the reference was made;
  - (b) in relation to a direction under section 128(3), the date on which the reference or application was made;
  - (c) in relation to an order section 135D(1), the date on which the first payment under section 135C(2) became due; and
  - (d) in relation to an order under section 135F, the date on which the application was made.”
- (3) Subsection (2) does not apply in any case where the reference or application to the Copyright Tribunal was or is made before the commencement of this section.

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**Textual Amendments**  
**F425** S. 140 repealed (28.5.2000) by S.I. 2000/1175, reg. 4

<sup>F426</sup>**141** .....

**Textual Amendments**  
**F426** S. 141 repealed (28.5.2000) by 2000/1175, reg. 4

**PART VIII**

MISCELLANEOUS AND GENERAL

*Standards for transmission systems*

<sup>F427</sup>**142 Standards for transmission systems.**

.....

**Textual Amendments**  
**F427** S. 142 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)

*Disqualification on grounds relating to political objects*

**143 Duties of Independent Television Commission and Radio Authority in cases involving disqualification on grounds related to political objects.**

- (1) If it appears to the [<sup>F428</sup>OFCOM] that there are grounds for suspecting that any person who is an applicant for a licence under [<sup>F429</sup>Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,] is by virtue of any of the provisions specified in subsection (5) a disqualified person in relation to that licence, [<sup>F428</sup>OFCOM] shall be regarded as failing to discharge their duty under [<sup>F430</sup>section 5(1) or 88(1) of the 1990 Act or section 5(1) or 44(1) of this Act] , if they grant the licence to that person without being provided with information which satisfies them that he is not on those grounds a disqualified person by virtue of that provision.
- (2) If it appears to [<sup>F431</sup>OFCOM] that there are grounds for suspecting that any person who is the holder of a licence under [<sup>F432</sup>Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,] is by virtue of any of the provisions specified in subsection (5) a disqualified person in relation to that licence, [<sup>F431</sup>OFCOM] shall be regarded as failing to discharge their duty under [<sup>F433</sup>section 5(1) or 88(1) of the 1990 Act or section 5(1) or 44(1) of this Act] , unless—

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- (a) they require him to provide them with information for the purpose of determining whether he is on those grounds a disqualified person by virtue of that provision, and
- (b) if they are satisfied that he is a disqualified person, they revoke the licence.

<sup>F434</sup>(3) .....

<sup>F434</sup>(4) .....

(5) The provisions referred to in subsections (1) [<sup>F435</sup>and (2)] are the following provisions of paragraph 1(1) of Part II of Schedule 2 to the 1990 Act—

- (a) paragraphs (d) to (g),
- (b) paragraph (h) so far as relating to participation by bodies falling within paragraph (d), (e) or (g),
- (c) paragraph (hh) so far as relating to a body corporate controlled by a body corporate in which a body falling within paragraph (d), (e) or (g) is a participant with more than a 5 per cent. interest,
- (d) paragraph (i) so far as relating to control by a person falling within any of paragraphs (d) to (g) or by two or more such persons, and
- (e) paragraph (j) so far as relating to participation by a body corporate which is controlled by a person falling within any of paragraphs (d) to (g) or by two or more such persons.

(6) Nothing in subsections (1) to (5) shall be taken to limit the generality of [<sup>F436</sup>the duties imposed on OFCOM by sections 5(1) and 88(1) of the 1990 Act and sections 5(1) and 44(1) of this Act.]

#### Textual Amendments

- F428** Words in s. 143(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F429** Words in s. 143(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F430** Words in s. 143(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F431** Words in s. 143(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F432** Words in s. 143(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F433** Words in s. 143(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F434** S. 143(3)(4) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(5\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F435** Words in s. 143(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F436** Words in s. 143(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 138\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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*Provision of false information, etc.*

**144 Offence of providing false information in certain circumstances.**

(1) A person who, in connection with an application by him for, or his continued holding of, a licence under the 1990 Act or this Act—

- (a) makes [<sup>F437</sup>a statement to OFCOM] which he knows to be false in a material particular, or
- (b) recklessly makes [<sup>F437</sup>a statement to OFCOM] which is false in a material particular,

is guilty of an offence if the statement relates to a matter which would be relevant in determining whether he is by virtue of any of the provisions specified in subsection (3) a disqualified person, and he is by virtue of any of those provisions a disqualified person in relation to that licence.

(2) A person who, in connection with an application by him for, or his continued holding of, a licence under the 1990 Act or this Act, withholds any information with the intention of causing [<sup>F438</sup>OFCOM] to be misled is guilty of an offence if—

- (a) the information would be relevant in determining whether he is by virtue of any of the provisions specified in subsection (3) a disqualified person, and
- (b) he is by virtue of any of those provisions a disqualified person in relation to that licence.

(3) The provisions referred to in subsections (1) and (2) are the following provisions of paragraph 1(1) of Part II of Schedule 2 to the 1990 Act—

- (a) paragraphs (d) to (g),
- (b) paragraph (h) so far as relating to participation by bodies falling within paragraph (d), (e) or (g),
- (c) paragraph (hh) so far as relating to a body corporate controlled by a body corporate in which a body falling within paragraph (d), (e) or (g) is a participant with more than a 5 per cent. interest,
- (d) paragraph (i) so far as relating to control by a person falling within any of paragraphs (d) to (g) or by two or more such persons, and
- (e) paragraph (j) so far as relating to participation by a body corporate which is controlled by a person falling within any of paragraphs (d) to (g) or by two or more such persons.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

<sup>F439</sup>(5) .....

**Textual Amendments**

**F437** Words in s. 144(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 139\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F438** Words in s. 144(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 139\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F439** [S. 144\(5\)](#) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 139\(4\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)



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## 145 Disqualification for offence of supplying false information, etc.

- (1) Where a person is convicted of an offence under section 144 the court by which he is convicted may make an order (in this section referred to as a “disqualification order”) disqualifying him from holding a licence during a period specified in the order.
- (2) The period specified in a disqualification order shall not exceed five years beginning with the date on which the order takes effect.
- (3) Where an individual is disqualified from holding a licence by virtue of a disqualification order, any body corporate—
  - (a) of which he is a director, or
  - (b) in the management of which he is directly or indirectly concerned,is also disqualified from holding a licence.
- (4) Where the holder of a licence is disqualified by virtue of a disqualification order, the licence shall be treated as being revoked with effect from the time when the order takes effect.
- (5) For the purposes of any of the provisions specified in subsection (6) (which relate to the imposition of a financial penalty on the revocation of a licence), a licence which is revoked by virtue of subsection (4) shall be taken to have been revoked by [F440OFCOM] as mentioned in that provision.
- (6) The provisions referred to in subsection (5) are as follows—
  - (a) section 18(3) of the 1990 Act,
  - (b) section 101(3) of the 1990 Act,
  - (c) section 11(5), and
  - (d) section 53(5).
- (7) In sections [F4415(1)(a) and (2)(db)<sup>F442</sup> ... and 88(1)(a) and (2)(db)] of the 1990 Act and sections [F4435(1)(a) and (2)(db) and 44(1)(a) and (2)(db)] of this Act, the reference to a person who is a disqualified person by virtue of Part II of Schedule 2 to the 1990 Act includes a reference to a person who is disqualified by virtue of a disqualification order.
- (8) In this section—

[F444“licence” means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of this Act;]

F445  
...

### Textual Amendments

- F440** Words in s. 145(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 140\(2\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F441** Words in s. 145(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 140\(3\)\(a\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F442** Words in s. 145(7) repealed (29.12.2003) by [The Media Ownership \(Local Radio and Appointed News Provider\) Order 2003 \(S.I. 2003/3299\), arts. 1\(2\), 13\(2\)](#)
- F443** Words in s. 145(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 140\(3\)\(b\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F444** Words in s. 145(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 140\(4\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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**F445** Words in s. 145(8) 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)

## **146 Supplementary provisions as to disqualification orders.**

- (1) A person disqualified by a disqualification order may appeal against the order in the same manner as against a conviction.
- (2) A disqualification order made by a court in England and Wales or Northern Ireland—
  - (a) shall not take effect until the end of the period within which the person on whose conviction the order was made can appeal against the order, and
  - (b) if he so appeals, shall not take effect until the appeal has been determined or abandoned.
- (3) A disqualification order made by a court in Scotland—
  - (a) shall not take effect until the end of the period within which the person on whose conviction the order was made can appeal against the order, and
  - (b) if an appeal against the order or the conviction is taken within that period, shall not take effect until the date when that appeal is determined or abandoned or deemed to have been abandoned.
- (4) In this section “disqualification order” means an order under section 145.

### *General*

## **147 General interpretation.**

- (1) In this Act—
  - “the 1990 Act” means the <sup>M3</sup>Broadcasting Act 1990;
  - “the BBC” means the British Broadcasting Corporation.
  - [<sup>F446</sup>“ OFCOM” means the Office of Communications;]
- (2) The 1990 Act and the following provisions of this Act—
  - (a) Parts I and II and Schedule 1,
  - (b) Part IV,
  - (c) Part V and Schedules 3 and 4, and
  - (d) sections 142 to 146,
 shall be construed as if those provisions were contained in that Act.

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### **Textual Amendments**

**F446** Words in s. 147(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 141](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

**C51** S. 147(1) extended (with modifications) (22.8.1997): to Guernsey by [S.I. 1997/1755](#), art. 2, [Sch.](#); to the Isle of Man by [S.I. 1997/1756](#), art. 2, [Sch.](#); to Jersey by [S.I. 1997/1757](#), art. 2, [Sch.](#)

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**Status:** Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.  
**Changes to legislation:** Broadcasting Act 1996 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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#### Commencement Information

**I4** S. 147 wholly in force: S. 147(1) in force at 24.7.1996, see s. 149(1); s. 147(2)(a)(b)(d) in force at 1.10.1996 by [S.I. 1996/2120, art. 4, Sch. 1](#); s. 147(2)(c) in force at 1.4.1997 by [S.I. 1997/1005, art. 4](#)

#### Marginal Citations

**M3** [1990 c. 42.](#)

### 148 Minor and consequential amendments, repeals and revocations.

- (1) Schedule 10 (which makes minor and consequential amendments) shall have effect.
- (2) The enactments and instruments mentioned in Schedule 11 are hereby repealed or, as the case may be, revoked to the extent specified in the third column of that Schedule.

#### Commencement Information

**I5** [S. 148](#) wholly in force: s. 148 in force for certain purposes at 24.7.1996 see [s. 149\(1\)](#); [s. 148](#) in force for certain purposes at 1.10.1996 by [S.I. 1996/2120, art. 4, Sch. 1](#); [s. 148](#) in force for certain purposes at 1.11.1996 by [S.I. 1996/2120, art. 5, Sch. 2](#); [s. 148](#) wholly in force at 1.4.1997 by [S.I. 1997/1005, art. 4](#)

### 149 Commencement and transitional provisions.

- (1) The following provisions of this Act—
  - (a) paragraphs 7 to 9 of Schedule 2 so far as relating to BBC companies (as defined by section 202(1) of the 1990 Act), and section 73 so far as relating to those paragraphs in their application to such companies,
  - (b) sections 74 to 78,
  - (c) section 80,
  - (d) section 83,
  - (e) sections 88, 90 and 92,
  - (f) Part VI (and Schedules 5 to 8),
  - (g) section 147(1),
  - (h) paragraphs 15 and 19 of Schedule 10 so far as relating to BBC companies (as defined by section 202(1) of the 1990 Act), and section 148(1) so far as relating to those paragraphs in their application to such companies,
  - (i) the entries in Schedule 11 relating to sections 32(9), 45(8) and (9) and 47(11) and (12) of the 1990 Act, and section 148(2) so far as relating to those entries, and
  - (j) this section and section 150,shall come into force on the passing of this Act.
- (2) The other provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) The power to make an order under this section includes power to make such transitional provisions and savings as the Secretary of State considers appropriate.

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### **Subordinate Legislation Made**

- P1** S. 149(2) power partly exercised (9.8.1996): different dates appointed for specified provisions by [S.I. 1996/2120](#)
- S. 149(2) power partly exercised (21.3.1997): different dates appointed for specified provisions by [S.I. 1997/1005](#)
- S. 149(2) power partly exercised (28.1.1998): 29.1.1998 appointed for specified provisions for specified purposes by [S.I. 1998/188](#), **art. 3**

### **150 Short title and extent.**

- (1) This Act may be cited as the Broadcasting Act 1996.
- (2) This Act, except paragraph 27 of Schedule 10, extends to Northern Ireland.
- (3) Section 204(6) of the 1990 Act (power to extend to Isle of Man and Channel Islands) applies to the provisions of this Act amending that Act.
- (4) Her Majesty may by Order in Council direct that any of the other provisions of this Act shall extend to the Isle of Man or any of the Channel Islands with such modifications, if any, as appear to Her Majesty to be appropriate.

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

- C52** S. 150(1) extended (with modifications) (22.8.1997): to Guernsey by [S.I. 1997/1755](#), **art. 2**, **Sch.**; to the Isle of Man by [S.I. 1997/1756](#), **art. 2**, **Sch.**; to Jersey by [S.I. 1997/1757](#), **art. 2**, **Sch.**

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## SCHEDULES

### SCHEDULE 1

Sections 37, 70.

#### MULTIPLEX REVENUE: SUPPLEMENTARY PROVISIONS

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

C53 Sch. 1 applied (*prosp.*) by 1990 c. 42, s. 26(9A) (as inserted by 1996 c. 55, s. 82(3))

### PART I

#### MULTIPLEX REVENUE FOR PURPOSES OF PART I OF THIS ACT

##### *Computation of multiplex revenue*

- 1 (1) It shall be the duty of [F447OFCOM] to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining—
- (a) the multiplex revenue in relation to a licence holder for the purposes of section 14 for any accounting period, and
  - (b) the share of multiplex revenue attributable to a person in relation to any multiplex service for the purposes of any provision of Part I of this Act—
    - (i) for any accounting period of the holder of the multiplex licence, or
    - (ii) for any year.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph [F447OFCOM] shall consult the Secretary of State and the Treasury.
- (4) [F447OFCOM] shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

##### Textual Amendments

F447 Words in Sch. 1 Pt. 1 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 142(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Status:* Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.

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### Disputes

- 2 (1) For the purposes of any provision of Part I of this Act—
- (a) the amount of the multiplex revenue in relation to any holder of a multiplex licence for any accounting period of his, or (as the case may be) for any year, or
  - (b) the amount of any payment to be made to [F447OFCOM] by any person in respect of any such revenue, or of an instalment of any such payment,
- shall, in the event of a disagreement between [F447OFCOM] and that person, be the amount determined by [F447OFCOM] .
- (2) For the purposes of any provision of Part I of this Act the share of multiplex revenue attributable to any person in relation to a multiplex service for any accounting period or (as the case may be) for any year shall, in the event of a disagreement between [F447OFCOM] and that person, be the amount determined by [F447OFCOM] .
- (3) No determination of [F447OFCOM] under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

#### Textual Amendments

**F447** Words in Sch. 1 Pt. 1 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 142\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## PART II

### MULTIPLEX REVENUE FOR PURPOSES OF PART II OF THIS ACT

#### Computation of multiplex revenue

- 3 (1) It shall be the duty of [F448OFCOM] to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining—
- (a) the multiplex revenue in relation to a licence holder for the purposes of section 56 for any accounting period, and
  - (b) the share of multiplex revenue attributable to a person in relation to any national radio multiplex service for the purposes of any provision of Part II of this Act—
    - (i) for any accounting period of the holder of the national radio multiplex licence, or
    - (ii) for any year.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph [F448OFCOM] shall consult the Secretary of State and the Treasury.
- (4) [F448OFCOM] shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and

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- (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

#### Textual Amendments

**F448** Words in Sch. 1 Pt. 2 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 142\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### Disputes

- 4 (1) For the purposes of any provision of Part II of this Act—
- (a) the amount of the multiplex revenue in relation to any holder of a national radio multiplex licence for any accounting period of his, or (as the case may be) for any year, or
- (b) the amount of any payment to be made to [F448OFCOM] by any person in respect of any such revenue, or of an instalment of any such payment,
- shall, in the event of a disagreement between [F448OFCOM] and that person, be the amount determined by [F448OFCOM] .
- (2) For the purposes of any provision of Part II of this Act the share of multiplex revenue attributable to any person in relation to any national radio multiplex service for any accounting period or (as the case may be) for any year shall, in the event of a disagreement between [F448OFCOM] and that person, be the amount determined by [F448OFCOM] .
- (3) No determination of [F448OFCOM] under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

#### Textual Amendments

**F448** Words in Sch. 1 Pt. 2 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 142\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## SCHEDULE 2

Section 73.

### AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO RESTRICTIONS ON HOLDING OF LICENCES

#### PART I

##### AMENDMENTS OF PART I OF SCHEDULE 2

- 1 (1) In Part I of Schedule 2, paragraph 1 (which contains interpretative provisions) is amended as follows.

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(2) In sub-paragraph (1)—

(a) before the definition of “advertising agency” there is inserted—

““the 1996 Act” means the Broadcasting Act 1996;”,

(b) for paragraph (a) of the definition of “associate” there is substituted—

“in relation to a body corporate, shall be construed in accordance with paragraph (1A), and”,

(c) in paragraph (b) of the definition of “control” for “by virtue of the rules regulating that or any other body” there is substituted “ by whatever means and whether directly or indirectly ”,

F449(d) .....

F449(e) .....

F449(f) .....

(3) After sub-paragraph (1) there is inserted—

“(1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—

- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
- (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.”

(4) For sub-paragraph (3) there is substituted—

“(3) For the purposes of this Schedule a person controls a body corporate if—

- (a) he holds, or is beneficially entitled to, more than 50 per cent. of the equity share capital in the body, or possesses more than 50 per cent. of the voting power in it, or
- (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body are conducted in accordance with his wishes; or
- (c) he holds, or is beneficially entitled to, 50 per cent. of the equity share capital in that body, or possesses 50 per cent. of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

(3A) For the purposes of sub-paragraph (3)(c)—

- (a) “arrangement” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
- (b) a person shall be treated—
  - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and



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(ii) as possessing any voting power possessed by such a body corporate.”

(5) Sub-paragraph (4) is omitted.

(6) For sub-paragraph (6) there is substituted—

“(6) In this Schedule any reference to a participant with more than a 20 per cent. interest in a body corporate is a reference to a person who—

- (a) holds or is beneficially entitled to more than 20 per cent. of the shares in that body, or
- (b) possesses more than 20 per cent. of the voting power in that body.

(7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—

- (a) to an interest of more than a specified percentage in a body corporate, or
- (b) to an interest of a specified percentage or more in a body corporate.

(8) Any reference in this Schedule to a person who is over a particular age is a reference to a person who has attained that age.”

#### Textual Amendments

**F449** Sch. 2 para. 1(2)(d)-(f) 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](#))

#### Commencement Information

**I6** Sch. 2 para. 1 wholly in force at 1.11.1996; Sch. 2 para. 1 not in force at Royal Assent see s. 149; Sch. 2 para. 1 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by [S.I. 1996/2120](#), [art. 3, 4](#), [Sch. 1](#)

2 (1) Paragraph 2 of Part I of Schedule 2 is amended as follows.

(2) At the beginning of sub-paragraph (1) there is inserted “ Subject to sub-paragraph (1A) ”.

(3) After sub-paragraph (1) there is inserted—

“(1A) For the purposes of this Schedule, a person’s holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—

- (a) he holds the shares concerned—
  - (i) as a nominee,
  - (ii) as a custodian (whether under a trust or by a contract), or
  - (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, as defined by section 220(1) of the Companies Act 1985, in respect of the shares concerned, and
- (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.

(1B) For the purposes of sub-paragraph (1A)(b)—

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- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
- (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.”

**Commencement Information**

**I7** Sch. 2 para. 2 wholly in force at 1.11.1996; Sch. 2 para. 2 not in force at Royal Assent see s. 149; Sch. 2 para. 2 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

3 For paragraph 3 of Part I of Schedule 2 there is substituted—

“3 For the purposes of this Schedule the following persons shall be treated as connected with a particular person—

- (a) a person who controls that person,
- (b) an associate of that person or of a person falling within paragraph (a), and
- (c) a body which is controlled by that person or by an associate of that person.”

**Commencement Information**

**I8** Sch. 2 para. 3 wholly in force at 1.11.1996; Sch. 2 para. 3 not in force at Royal Assent see s. 149; Sch. 2 para. 3 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

F450<sup>4</sup> .....

**Textual Amendments**

**F450** Sch. 2 para. 4 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)

F451<sup>5</sup> .....

**Textual Amendments**

**F451** Sch. 2 para. 5 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)

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## PART II

### AMENDMENTS OF PART II OF SCHEDULE 2

6 (1) In Part II of Schedule 2, paragraph 1 (general disqualification of non-EEA nationals and bodies having political connections) is amended as follows.

(2) In sub-paragraph (1), after paragraph (h) there is inserted—

“(hh) a body corporate which is controlled by a body corporate falling within paragraph (h);”.

<sup>F452</sup>(3) .....

#### Textual Amendments

**F452** Sch. 2 para. 6(3) 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)

7 In paragraph 3 of Part II of Schedule 2 (disqualification of publicly-funded bodies for radio service licences), in sub-paragraph (1)(a) for “(other than a local authority)” there is substituted “(other than a local authority, the Welsh Authority or the BBC)”.

#### Commencement Information

**I9** Sch. 2 para. 7 wholly in force at 1.11.1996; Sch. 2 para. 7 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 7 in force at 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1

8 In paragraph 5 of Part II of Schedule 2 (general disqualification of broadcasting bodies), paragraphs (c) and (d) are omitted.

#### Commencement Information

**I10** Sch. 2 para. 8 wholly in force at 1.11.1996; Sch. 2 para. 8 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 8 in force at 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1

9 After paragraph 5 of Part II of Schedule 2 there is inserted—

#### “Disqualification of certain companies for certain licences

5A (1) A BBC company, a Channel 4 company or an S4C company is a disqualified person in relation to—

- (a) any licence granted by the Commission to provide regional or national Channel 3 services or Channel 5, and
- (b) any licence granted by the Commission to provide a local delivery service.

(2) A BBC company is also a disqualified person in relation to any licence granted by the Authority to provide a national, local or restricted service within the meaning of Part III of this Act.

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- (3) The Secretary of State may by order provide that sub-paragraph (1) (b) shall not have effect in relation to any local delivery service of a description specified in the order.”

**Commencement Information**

**I11** Sch. 2 para. 9 wholly in force at 1.10.1996; Sch. 2 para. 9 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 9 in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1

**PART III**

PROVISIONS SUBSTITUTED FOR PART III OF SCHEDULE 2

F453 10 .....

**Textual Amendments**

**F453** Sch. 2 para. 10 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)

**PART IV**

PROVISIONS SUBSTITUTED FOR PART IV OF SCHEDULE 2

F454 11 .....

**Textual Amendments**

**F454** Sch. 2 para. 11 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)

**PART V**

AMENDMENTS OF OTHER PROVISIONS OF 1990 ACT

- 12 (1) Section 5 of the 1990 Act (restrictions on the holding of licences) is amended as follows.
- (2) For subsection (6) there is substituted—
  - “(6) The Commission shall not serve any such notice on the licence holder unless—
    - (a) the Commission have notified him of the matters complained of and given him a reasonable opportunity of making representations to them about those matters, and
    - (b) in a case where the relevant change is one falling within subsection (6A)—

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- (i) they have also given him an opportunity of complying with Parts III and IV of Schedule 2 within a period specified in the notification, and
  - (ii) the period specified in the notification has elapsed.
- (6A) A relevant change falls within this subsection if it consists only in one or more of the following—
- (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2;
  - (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule);
  - (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (6B) Where a licence has been granted in a case where the Commission could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Commission would have made such a determination in the new circumstances of the case.”
- (3) In subsection (7)—
- (a) after paragraph (b) there is inserted—
- “or
- (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,” and
  - (b) for “(in either case)” there is substituted “ (in any case) ”.
- 13 (1) Section 88 of the 1990 Act (restrictions on the holding of licences) is amended as follows.
- (2) For subsection (6) there is substituted—
- “(6) The Authority shall not serve any such notice on the licence holder unless—
- (a) the Authority have notified him of the matters complained of and given him a reasonable opportunity of making representations to them about those matters, and
  - (b) in a case where the relevant change is one falling within subsection (6A)—
    - (i) they have also given him an opportunity of complying with Parts III and IV of Schedule 2 within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.
- (6A) A relevant change falls within this subsection if it consists only in one or more of the following—
- (a) a reduction in the total number of points, calculated in accordance with paragraph 9 of Part III of Schedule 2, attributable to all the

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services referred to in paragraph 8(1) or (2)(a) or (b) of that Part of that Schedule;

- (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule);
- (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).

(6B) Where a licence has been granted in a case where the Authority could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Authority would have made such a determination in the new circumstances of the case.”

(3) In subsection (7)—

(a) after paragraph (b) there is inserted—

“or

(c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,” and

(b) for “(in either case)” there is substituted “ (in any case) ”.

F455 SCHEDULE 3

Section 106(3).

**Textual Amendments**

F455 Sch. 3 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)

F456 SCHEDULE 4

Section 128.

**Textual Amendments**

F456 Sch. 4 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)

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## SCHEDULE 5

Section 131(4).

### TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUPPLEMENTARY PROVISIONS

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

**C54** Sch. 5 extended (with modifications) (22.8.1997): to Guernsey by S.I. 1997/1755, art. 2, Sch.; to the Isle of Man by S.I. 1997/1756, art. 2, Sch.; to Jersey by S.I. 1997/1757, art. 2, Sch.

#### *Contents and effect of scheme*

- 1 (1) A transfer scheme may define the property, rights and liabilities to be transferred to a particular person—
  - (a) by specifying or describing the property, rights and liabilities in question,
  - (b) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the BBC’s undertaking, or
  - (c) partly in one way and partly in the other.
- (2) A transfer scheme shall appoint the day on which it is to come into force.
- (3) This Act shall have effect, in relation to any provision of a transfer scheme for the transfer of any property, rights or liabilities, so as to transfer the property, rights or liabilities, at the beginning of the day appointed for the coming into force of the scheme, and without further assurance, from the BBC to the person to whom they are allocated under the scheme and to vest them in that person; and the provisions of that scheme in relation to that transfer shall have effect from that time accordingly.
- (4) This Act shall have effect, in relation to any provision of a transfer scheme for the creation, by virtue of paragraph 2, of any interest or right, so as to create the specified interests and rights, at the beginning of the day appointed for the coming into force of the scheme and without further assurance.
- (5) The preceding provisions of this paragraph shall have effect subject to so much of a transfer scheme as provides for—
  - (a) the transfer of any of the property, rights or liabilities to be transferred in accordance with the scheme, or
  - (b) the creation of any of the rights or interests to be created in accordance with the scheme,to be effected by or under any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g).
- (6) In their application to Scotland, sub-paragraphs (3) and (4) shall have effect with the omission of the words “and without further assurance”.

#### *Division of BBC’s undertaking by scheme*

- 2 (1) For the purposes of making any such division as the BBC consider appropriate of any of the property, rights and liabilities of the BBC between two or more persons (including any division between the BBC and any one or more other persons), a transfer scheme may contain provision—

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- (a) for the creation in favour of the BBC of an interest or right in or in relation to property transferred in accordance with that scheme to any person,
  - (b) for the creation, in favour of a person to whom any transfer is made, of an interest or right in or in relation to property so transferred to another,
  - (c) for giving effect to a transfer to any person by the creation, in favour of that person, of an interest or right in or in relation to property retained by the BBC,
  - (d) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both one or more transferees and the BBC,
  - (e) for rights and liabilities enforceable by or against more than one person in accordance with any provision falling within paragraph (d) to be enforceable in different or modified respects by or against each or any of them,
  - (f) for the creation of new rights and liabilities as between different transferees and as between any transferee and the BBC, and
  - (g) without prejudice to paragraph (f), for imposing on any transferee or the BBC an obligation—
    - (i) to enter into such written agreements with any other person on whom any corresponding obligation is, could be or has been imposed by virtue of this paragraph of this Schedule (whether in the same or a different scheme), or
    - (ii) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) A transfer scheme may contain such supplemental and incidental provision with respect to the interests, rights and liabilities of third parties in relation to anything to which the scheme relates as the BBC consider to be necessary or expedient for the purposes of any such division as is mentioned in sub-paragraph (1), or in connection with anything contained in the scheme by virtue of that sub-paragraph.
- (3) The provision that may be contained in a transfer scheme by virtue of sub-paragraph (2) shall include provision for interests, rights or liabilities to which any third party is entitled or subject in relation to anything to which the scheme relates to be modified in such respects or in such manner as may be specified or determined under the scheme.
- (4) An obligation imposed on any person by virtue of sub-paragraph (1)(g) shall be enforceable by the bringing, by any person with or in favour of whom the agreement or instrument is to be entered into or executed, of civil proceedings for an injunction or for interdict or for other appropriate relief.
- (5) In this paragraph—
- (a) references, in relation to a transfer scheme, to a transferee include references to any person in whose favour any interest or right is created in accordance with the scheme, and
  - (b) the reference, in relation to such a scheme, to a third party is a reference to a person other than—
    - (i) the BBC, or
    - (ii) any person who (apart from any provision made by virtue of sub-paragraph (1)(e) or (2)) is a transferee.



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- (6) Sub-paragraphs (2) and (3) shall be without prejudice to the generality of paragraph 4(1).

*Property to which a scheme may relate*

- 3 (1) The property, rights and liabilities that shall be capable of being transferred in accordance with a transfer scheme shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the BBC,
  - (b) rights and liabilities of the BBC under any agreement or arrangement for the payment of pensions, allowances and gratuities,
  - (c) property acquired at a time after the making of the scheme and before it comes into force, and rights and liabilities which arise or may arise in respect of anything occurring after the making of the scheme,
  - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom, and
  - (e) rights and liabilities under enactments.
- (2) The transfers authorised by sub-paragraph (1)(a), and the interests and rights that may be created in accordance with a transfer scheme, include transfers, interests and rights which are to take effect as if there were—
- (a) no such requirement to obtain any person’s consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,
- as there would be, in the case of any transaction apart from this Act, by reason of provisions having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the BBC are entitled or subject to any property, right or liability.
- (3) Where apart from this sub-paragraph any person would have an entitlement, in consequence of anything done or likely to be done by or under this Act, to terminate, modify, acquire or claim an interest or right which is vested in the BBC at the passing of this Act or acquired by the BBC after that time, or to treat any such interest or right as modified or terminated, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that entitlement shall not be enforceable in relation to that interest or right until after its transfer in accordance with such a scheme, and
  - (b) without prejudice to the preceding provisions of this paragraph or to paragraph 4(2)(a), that entitlement shall be enforceable in relation to the interest or right after its transfer only in so far as the scheme contains provision for it to be transferred subject to the provisions conferring that entitlement.
- (4) Subject to sub-paragraphs (5) and (6), nothing in sub-paragraph (1) or (2) shall enable—
- (a) any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g), or
  - (b) anything done under any such agreement,
- to give effect to any transfer, or to create any interest or right, which could not apart from this paragraph have been made by or under that agreement or instrument.

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- (5) A transfer scheme may provide for—
- (a) the transfers to which effect is to be given by or under any agreement or instrument entered into or executed in accordance with the scheme, or
  - (b) the interests or rights that are to be created by or under any such agreement or instrument,
- to include, to such extent as may be specified in the scheme, any such transfer, interest or right as is mentioned in sub-paragraph (2).
- (6) A transfer scheme may provide that sub-paragraph (3) shall apply in relation to the provisions of any agreement or instrument which is to be entered into or executed in accordance with the scheme, and in relation to any proposal for such an agreement or for the execution of such an instrument, as if the reference in sub-paragraph (3)(b) to provision contained in the scheme included a reference to provision contained, in accordance with the scheme, in the agreement or instrument.

*Supplemental provisions of schemes*

- 4 (1) A transfer scheme may contain supplemental, incidental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with any other provisions contained in the scheme; and any such provision may include different provision for different cases or different purposes.
- (2) A transfer scheme may, in relation to transfers in accordance with the scheme, make provision, either generally or for such purposes as may be specified in the scheme—
- (a) for the transferee to be treated as the same person in law as the BBC,
  - (b) for agreements made, transactions effected or other things done by or in relation to the BBC to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee,
  - (c) for references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the BBC to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme,
  - (d) for proceedings commenced by or against the BBC to be continued by or against the transferee, and
  - (e) for any such disputes as to the effect of the scheme as arise between different transferees, or between any transferee on the one hand and the BBC on the other, to be referred to such arbitration as may be specified in or determined under the scheme.
- (3) Where any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in England and Wales or Northern Ireland—
- (a) the scheme may contain provision for treating that person as having given another person an acknowledgment in writing of the right of that other person to production of the document and to delivery of copies of the document, and
  - (b) section 64 of the <sup>M4</sup>Law of Property Act 1925 (production and safe custody of documents) or section 9 of the <sup>M5</sup>Conveyancing Act 1881 (the corresponding

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provision for Northern Ireland) shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

- (4) Where any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in Scotland transferred in accordance with a transfer scheme, subsections (1) and (2) of section 16 of the <sup>M6</sup>Land Registration (Scotland) 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.
- (5) In this paragraph—
- (a) references to a transfer include references to the creation in any person’s favour of any interest or right, and references to a transferee shall be construed accordingly, and
  - (b) references to a person who is entitled, in consequence of any transfer, to possession of a document include references to the BBC in a case where the BBC are entitled to retain possession of any document following any transfer.
- (6) Sub-paragraphs (2) to (4) shall be without prejudice to the generality of sub-paragraph (1).

#### Marginal Citations

**M4** 1925 c. 20.

**M5** 1881 c. 41.

**M6** 1979 c. 33.

#### *Certificate of Secretary of State as to vesting of property etc.*

- 5 A certificate issued by the Secretary of State to the effect that any property, right or liability of the BBC vested at a particular time in accordance with a transfer scheme in a person specified in the certificate shall be conclusive evidence of the matters stated in the certificate.

#### *Duties in relation to foreign property etc.*

- 6 (1) It shall be the duty of the BBC and of any person to whom any foreign property, right or liability is transferred to take all such steps as may be requisite to secure that the vesting in the transferee, in accordance with the scheme, of the foreign property, right or liability is effective under the relevant foreign law.
- (2) Until the vesting in the transferee in accordance with the scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the BBC to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.
- (3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in the transferee in accordance with the scheme of any foreign property, right or liability.

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- (4) The BBC shall have all such powers as may be requisite for the performance of their duties under this paragraph, but it shall be the duty of a person to whom a transfer is made in accordance with a transfer scheme to act on behalf of the BBC (so far as possible) in performing the duties imposed on them by this paragraph.
- (5) Where—
- (a) any foreign property, rights or liabilities are acquired or incurred by the BBC in respect of any other property, rights or liabilities, and
  - (b) by virtue of this paragraph the BBC hold the other property or rights for the benefit of another person or discharge the liability on behalf of another person,
- the property, rights or liabilities acquired or incurred are immediately to become property, rights or liabilities of that other person; and the preceding provisions of this paragraph shall have effect accordingly in relation to the property, rights or liabilities acquired or incurred.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Any expenses incurred by the BBC under this paragraph shall be met by the person to whom the transfer in question is made.
- (8) Any obligation imposed under this paragraph shall be enforceable as if contained in a contract between the BBC and the person to whom the transfer in question is made.

*Modification of scheme by agreement*

- 7 (1) This paragraph applies where any person to whom anything has been transferred in accordance with a transfer scheme agrees in writing with the BBC or another person to whom anything has been transferred in accordance with that or any other transfer scheme that, for the purpose of modifying the effect of the scheme or, as the case may be, of modifying the effect of either or both of the schemes—
- (a) any of the property, rights or liabilities transferred in accordance with the scheme or either of them, and
  - (b) any or all of the property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,
- should be transferred from one to the other as from a date appointed by the agreement.
- (2) If—
- (a) the agreement is entered into within the period of twelve months after the time when a transfer in accordance with a transfer scheme of property, rights or liabilities to any of its parties comes into force, and
  - (b) the Secretary of State has given his approval to the transfer for which the agreement provides and to its terms and conditions,
- then the transfer for which the agreement provides shall take effect on the date appointed by the agreement in the like manner as a transfer for which provision is made by a transfer scheme.

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- (3) Subject to the approval of the Secretary of State and to sub-paragraph (4), the provisions that may be contained in a modification agreement shall include any such provision in relation to any transfer for which it provides as may be contained, in relation to any transfer for which a transfer scheme provides, in that scheme.
- (4) Nothing in any modification agreement shall provide for any interests or rights to be created, as opposed to transferred, except as between persons who are parties to the agreement.
- (5) Before—
  - (a) refusing his approval for the purposes of this paragraph, or
  - (b) giving his approval for those purposes in a case where the BBC are not a party to the proposed agreement,the Secretary of State shall consult the BBC.
- (6) In this paragraph references to a transfer in accordance with a transfer scheme include references to the creation of any interest, right or liability in accordance with such a scheme.
- (7) In this paragraph and paragraphs 8 and 9 “modification agreement” means any agreement providing for a transfer which is to take effect in accordance with sub-paragraph (2).

#### *Compensation*

- 8 (1) Where, in consequence of any provisions included in a transfer scheme for the purposes of any such division as is mentioned in paragraph 2(1), the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), the third party shall be entitled to such compensation as may be just in respect of—
  - (a) any diminution attributable to that modification in the value of any of his interests or rights, or
  - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) are modifications by virtue of which—
  - (a) an interest of the third party in any property is transformed into, or replaced by—
    - (i) an interest in only part of that property, or
    - (ii) separate interests in different parts of that property,
  - (b) a right of the third party against the BBC is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the BBC, or
  - (c) a liability of the third party to the BBC is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the BBC.
- (3) Where—
  - (a) a third party would, apart from any provisions of a transfer scheme or paragraph 3(3), have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and

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- (b) the provisions of that scheme or of paragraph 3(3) have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a), and
- (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.

- (4) A liability to pay compensation under this paragraph shall fall on the persons not being themselves third parties who, as the case may be—
  - (a) have interests in the whole or any part of the property affected by the modification in question,
  - (b) are subject to the rights of the person to be compensated which are affected by the modification in question,
  - (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or
  - (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3),

and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

- (5) Where any liability falls by virtue of sub-paragraph (4) on the BBC, that sub-paragraph shall have effect subject to so much of any transfer scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to any other person.
- (6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall be referred to and determined—
  - (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or
  - (b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- (7) This paragraph shall have effect in relation to the provisions of any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g), and to any modification agreement, as it has effect in relation to the provisions of a transfer scheme.
- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—
  - (a) the BBC or any of their wholly-owned subsidiaries (as defined by <sup>F457</sup>section 1159 of the Companies Act 2006) ,
  - (b) the Secretary of State, or

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- (c) any person whose consent to those provisions has been given for the purposes of section 132(2) or who has agreed to those provisions by virtue of being a party to a modification agreement.

#### Textual Amendments

**F457** Words in *Sch. 5 para. 8(8)(a)* substituted (1.10.2009) by *The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941)*, art. 1(2), **Sch. 1 para. 162(b)** (with art. 10)

#### *Notice to persons affected by scheme*

- 9 (1) It shall be the duty of the BBC, where it appears to them in the case of any transfer scheme or modification agreement that there are persons whose property, rights or liabilities are affected in a manner that may give rise to an entitlement to compensation under paragraph 8, to give notice under this paragraph to every such person.
- (2) A notice to be given by the BBC under this paragraph shall be given as soon as reasonably practicable after they make the scheme or agreement.
- (3) A notice under this paragraph shall set out the general effect of the scheme or, as the case may be, of the agreement and shall describe the respects in which it appears to the BBC that the property, rights or liabilities of the person to whom it is given are affected.
- (4) Where it is not reasonably practicable for the notice under this paragraph to any person to be given to that person, the BBC shall, instead, take such steps for publishing the contents of the notice as they may consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of that person.

#### *Consideration for transfer etc.*

- 10 (1) A transfer in accordance with a transfer scheme may be made for consideration or for no consideration and, if it is made for consideration, the consideration may, in particular, take the form of the issue of shares or securities.
- (2) In sub-paragraph (1), “transfer” has the meaning given by paragraph 1(1) of Schedule 7.

## SCHEDULE 6

Section 134.

### TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUCCESSOR COMPANIES

#### *Interpretation*

- 1 (1) In this Schedule—
- “the Charter” means the <sup>M7</sup>Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation;

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“preparatory scheme” means a transfer scheme whose main purpose is to provide for a transfer of property, rights or liabilities from the BBC to a wholly-owned subsidiary of the BBC;

“successor company” means a company to which property, rights or liabilities are transferred in accordance with a preparatory scheme at a time when the company is a wholly-owned subsidiary of the BBC;

“transfer” includes—

- (a) any transfer effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by a provision contained in a preparatory scheme by virtue of paragraph 2(1)(g) of Schedule 5;
- (b) the creation of interests, rights or liabilities by or under any such agreement or instrument; and
- (c) the creation of interests, rights or liabilities by virtue of any provision contained in a preparatory scheme by virtue of paragraph 2 of Schedule 5;

and references to a transfer in accordance with a preparatory scheme shall be construed accordingly;

“wholly-owned subsidiary” has the meaning given by <sup>F458</sup>section 1159 of the Companies Act 2006].

- (2) Any reference in this Schedule to vesting in accordance with a preparatory scheme or vesting effected by a preparatory scheme shall be construed as a reference to vesting as a result of a transfer in accordance with a preparatory scheme.

#### Textual Amendments

**F458** Words in [Sch. 6 para. 1\(1\)](#) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 162\(c\)](#) (with art. 10)

#### Marginal Citations

**M7** Cm. 3248.

#### *Statutory accounts*

- 2 (1) The following provisions of this paragraph shall have effect for the purposes of any statutory accounts of a successor company.
  - (2) The vesting in the company effected by any preparatory scheme shall be taken—
    - (a) to have been effected immediately after the end of the last financial year of the BBC to end before the coming into force of the scheme, and
    - (b) to have been a vesting of such property, rights and liabilities as are determined by or under the scheme.
  - (3) The value of any asset and the amount of any liability which is taken by virtue of sub-paragraph (2) to have been vested in the company shall be taken to have been—
    - (a) in the case where the value or amount is determined by or under the preparatory scheme, that value or amount, and



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- (b) in any other case, the value or amount assigned to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their last financial year to end before the day on which the preparatory scheme comes into force.
- (4) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (3).
- (5) In this paragraph “statutory accounts”, in relation to a company, means any accounts of that company prepared for the purposes of any provision of the [F459the Companies Act 2006] .

#### Textual Amendments

**F459** Words in *Sch. 6 para. 2(5)* substituted (6.4.2008) by *The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948)*, art. 2(2), *Sch. 1 para. 203(2)* (with arts. 6, 11, 12)

#### *Distributable reserves*

- 3 (1) Where statutory accounts of a successor company prepared as at any time would show the company as having net assets in excess of the aggregate of—
- (a) its called-up share capital, and
  - (b) the amount, apart from any property, rights and liabilities transferred to it in accordance with any preparatory scheme, of its undistributable reserves,
- then, for the purposes of [F460section 830 of the Companies Act 2006] and of the preparation as at that time of any statutory accounts of the company, that excess shall be treated, except so far as the Secretary of State may otherwise direct, as representing an excess of the company’s accumulated realised profits over its accumulated realised losses.
- (2) For the purposes of [F461section 831 of the Companies Act 2006] so much of any excess of a company’s net assets as falls, in accordance with a direction under this paragraph, to be treated otherwise than as representing an excess of the company’s accumulated realised profits over its accumulated realised losses shall be treated (subject to any modification of that direction by a subsequent direction under this paragraph) as comprised in the company’s undistributable reserves.
- (3) A direction under this paragraph may provide, in relation to any amount to which it applies, that, on the realisation (whether before or after the company in question ceases to be a wholly-owned subsidiary of the BBC) of such profits and losses as may be specified or described in the direction, so much of that amount as may be determined in accordance with the direction is to cease to be treated as mentioned in sub-paragraph (2) and is to fall to be treated as comprised in the company’s accumulated realised profits.
- (4) The Secretary of State shall not give a direction under this paragraph in relation to a successor company at any time after the company has ceased to be a wholly-owned subsidiary of the BBC.
- (5) The consent of the Treasury shall be required for the giving of a direction under this paragraph.

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(6) In this paragraph—

“called-up share capital” has the same meaning as in the [F462Companies Act 2006] ;

“net assets” has the meaning given by subsection (2) of [F463section 831 of the Companies Act 2006] ;

“undistributable reserves” has the meaning given by [F464subsection (4) of that section] ;

and references in this paragraph, in relation to a company, to statutory accounts are references to accounts of that company prepared in respect of any period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period.

#### Textual Amendments

**F460** Words in Sch. 6 para. 3(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 203(3) (with arts. 6, 11, 12)

**F461** Words in Sch. 6 para. 3(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 203(4) (with arts. 6, 11, 12)

**F462** Words in Sch. 6 para. 3(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 203(5)(a) (with arts. 6, 11, 12)

**F463** Words in Sch. 6 para. 3(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 203(5)(b) (with arts. 6, 11, 12)

**F464** Words in Sch. 6 para. 3(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), Sch. 1 para. 203(5)(c) (with arts. 6, 11, 12)

#### *Dividends*

4 (1) Where a distribution is proposed to be declared during any accounting reference period of a successor company which includes a transfer date or before any accounts are laid or filed in respect of such a period, [F465sections 836 to 840 of the Companies Act 2006] shall have effect as if—

(a) references in [F466section 836] to the company’s accounts or to accounts relevant under that section, and

(b) references in [F467section 839] to initial accounts,

included references to such accounts as, on the assumptions stated in subparagraph (2), would have been prepared under [F468section 394] of that Act in respect of the relevant year (in this paragraph referred to as “the relevant accounts”).

(2) Those assumptions are—

(a) that the relevant year had been a financial year of the successor company,

(b) that the vesting in accordance with the preparatory scheme had been a vesting of all the property, rights and liabilities transferred to the company in accordance with that scheme and had been effected immediately after the beginning of that year,

(c) that the value of any asset and the amount of any liability of the BBC vested in the successor company in accordance with the preparatory scheme had been the value or (as the case may be) amount determined by or under the scheme or (if there is no such determination) the value or amount assigned

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- to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their financial year immediately preceding the relevant year,
- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year, and
- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.
- (3) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (2)(c).
- (4) The relevant accounts shall not be regarded as statutory accounts for the purposes of paragraph 2.
- (5) In this paragraph—
- “accounting reference period” has the meaning given by [F469]section 391 of the Companies Act 2006] ;
- “complete financial year” means a financial year ending with 31st March;
- “the relevant year”, in relation to any transfer date, means the last complete financial year ending before that date;
- “a transfer date”, in relation to a successor company, means the date of the coming into force of any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company.

#### Textual Amendments

- F465** Words in Sch. 6 para. 4(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(a)** (with arts. 6, 11, 12)
- F466** Words in Sch. 6 para. 4(1)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(b)** (with arts. 6, 11, 12)
- F467** Words in Sch. 6 para. 4(1)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(c)** (with arts. 6, 11, 12)
- F468** Words in Sch. 6 para. 4(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(6)(d)** (with arts. 6, 11, 12)
- F469** Words in Sch. 6 para. 4(5) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 203(7)** (with arts. 6, 11, 12)

#### *Application of the Trustee Investments Act 1961*

- 5 (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the <sup>M8</sup>Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of a successor company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—

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- (a) in every year preceding the first investment year which is included in the relevant five years, and
- (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.

(2) In sub-paragraph (1)—

“the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made;

“the transfer date”, in relation to a successor company, means the first date on which any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company comes into force.

**Marginal Citations**

**M8** 1961 c. 62.

SCHEDULE 7

Section 135.

TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: TAXATION PROVISIONS

*Interpretation*

1 (1) In this Schedule, unless the context otherwise requires—

<sup>F470</sup>

“the BBC transmission network” has the meaning given by section 131(2);

[<sup>F471</sup>“the Capital Allowances Act” means the Capital Allowances Act 2001 and includes, where the context admits, enactments which under the Taxes Act 1988 are to be treated as contained in the Capital Allowances Act 2001.]

“direct disposal scheme” means a transfer scheme which is not a preparatory scheme;

“direct disposal transfer” means a transfer in accordance with a direct disposal scheme;

“the documents regulating the BBC” includes—

(a) the <sup>M9</sup>Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation; and

(b) the <sup>M10</sup>Agreement dated 25th January 1996 between Her Majesty’s Secretary of State for National Heritage and the British Broadcasting Corporation;

“the Gains Act” means the <sup>M11</sup>Taxation of Chargeable Gains Act 1992;

“modification agreement” has the meaning given by paragraph 7(7) of Schedule 5;

“preparatory scheme” means a transfer scheme whose main purpose is to provide for a transfer of property, rights or liabilities from the BBC to a wholly-owned subsidiary of the BBC;

“preparatory transfer” means a transfer in accordance with a preparatory scheme;

“relevant transfer” means a transfer in accordance with a transfer scheme;

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“successor company” means a company to which property, rights or liabilities are transferred in accordance with a preparatory scheme at a time when the company is a wholly-owned subsidiary of the BBC;

“the Taxes Act 1988” means the <sup>M12</sup>Income and Corporation Taxes Act 1988;

“transfer”, except for the purposes of paragraphs 13 to 18, includes—

- (a) any transfer effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by a provision contained in a transfer scheme by virtue of paragraph 2(1)(g) of Schedule 5;
- (b) the creation of interests, rights or liabilities by or under any such agreement or instrument; and
- (c) the creation of interests, rights or liabilities by virtue of any provision contained in a transfer scheme by virtue of paragraph 2 of Schedule 5;

and references to a transfer in accordance with a transfer scheme (or any description of transfer scheme) shall be construed accordingly;

“transferee”—

- (a) in relation to a transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the transfer scheme; and
- (b) in relation to a relevant transfer, means the person to whom the property, rights or liabilities in question are transferred in accordance with the transfer scheme in question;

“wholly-owned subsidiary” has the meaning given by [<sup>F472</sup>section 1159 of the Companies Act 2006] .

(2) In any provision of this Schedule “the prescribed amount”, in relation to any transferee under a transfer scheme, means such amount as may be specified by the Secretary of State by order for the purposes of that provision in its application to that transferee.

(3) This Schedule—

- (a) so far as it relates to corporation tax, shall be construed as one with the Corporation Tax Acts, and
- (b) so far as it relates to capital allowances, shall be construed as one with the [<sup>F473</sup>the Capital Allowances Act].

#### Textual Amendments

**F470** Sch. 7 para. 1(1): definition of “the Allowances Act” repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), 580, Sch. 2 para. 97(1), Sch. 4

**F471** Sch. 7 para. 1(1): definition of “the Capital Allowances Act” substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) for definition of “the capital Allowances Acts” by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(1)

**F472** Words in Sch. 7 para. 1(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 162(d) (with art. 10)

**F473** Words in Sch. 7 para. 1(3)(b) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(2)

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**Marginal Citations**  
**M9** Cm. 3248.  
**M10** Cm. 3152.  
**M11** 1992 c. 12.  
**M12** 1988 c. 1.

*Chargeable gains: preparatory transfers etc to be without gain or loss*

- 2 (1) For the purposes of corporation tax on chargeable gains, the disposal of property, rights or liabilities which is constituted by a preparatory transfer shall, subject to the following provisions of this Schedule, be taken in relation to both—
- (a) the person to whom the disposal is made, and
  - (b) the person making the disposal,
- to be effected for a consideration such that no gain or loss accrues to the person making the disposal.
- (2) Section 171(1) of the Gains Act (which makes provision in relation to the disposal of assets from one member of a group of companies to another member of the group) shall not apply where the disposal in question is a preparatory transfer.

*Chargeable gains: amendment of section 35(3)(d) of the Gains Act*

F474<sup>3</sup> .....

**Textual Amendments**  
**F474** Sch. 7 para. 3 omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 70(d)

*Chargeable gains: section 41 of the Gains Act*

- 4 Subsection (1) of section 174 of the Gains Act (which applies section 41 of that Act to cases where assets have been acquired without gain or loss) shall have effect, without prejudice to paragraph 2, where there has been a preparatory transfer as if the asset to which the preparatory transfer relates had thereby been transferred and acquired in relevant circumstances, within the meaning of that subsection.

*Chargeable gains: assets held before 6th April 1965*

- 5 Schedule 2 to the Gains Act (assets held on 6th April 1965) shall have effect in relation to any assets which are transferred to a successor company in accordance with a preparatory scheme as if—
- (a) the BBC and the successor company were the same person; and
  - (b) those assets, to the extent that they were in fact acquired or provided by the BBC, were acquired or, as the case may be, provided by the successor company.

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*Chargeable gains: sale of successor company : group transactions*

- 6
- (1) For the purposes of section 179 of the Gains Act (company ceasing to be a member of a group), where any company (“the degrouped company”) ceases, by virtue of a qualifying transaction, to be a member of a group of companies, the degrouped company shall not, by virtue of that qualifying transaction, be treated under that section as having sold, and immediately reacquired, any asset acquired from a company which falls to be regarded for the purposes of subsection (1) of that section as having been at the time of acquisition a member of that group.
  - (2) Where, disregarding any preparatory transactions, a company would be regarded for the purposes of section 179 of the Gains Act (and, accordingly, of this paragraph) as ceasing to be a member of a group of companies by virtue of a qualifying transaction, it shall be regarded for those purposes as so doing by virtue of the qualifying transaction and not by virtue of any preparatory transactions.
  - (3) In this paragraph—
    - “preparatory transaction”, in the case of any qualifying transaction, means anything done for the purpose of initiating, advancing or facilitating the qualifying transaction;
    - “qualifying transaction” means the disposal by the BBC of any shares or securities of a successor company.
  - (4) Expressions used in this paragraph and in section 179 of the Gains Act have the same meaning in this paragraph as they have in that section.

*Chargeable gains: sale or exchange of shares or securities of successor company*

- 7
- (1) Where a company issues shares or debentures to the BBC in exchange for shares in or debentures of a successor company which have not, before that exchange, been disposed of by the BBC—
    - (a) sections 127 to 131 of the Gains Act (reorganisation or reduction of share capital) shall not apply by virtue of subsection (3) of section 135 of that Act (exchange of securities) in relation to that exchange, and
    - (b) section 116 of that Act (reorganisations, conversions and reconstructions) accordingly does not have effect in relation to that transaction,and the following provisions of this paragraph shall apply accordingly.
  - (2) The following provisions of this paragraph apply in any case where—
    - (a) there is a preparatory transfer to a successor company;
    - (b) the BBC disposes of any shares or securities of the successor company for a consideration in money or money’s worth; and
    - (c) those shares or securities are shares or securities which were—
      - (i) held by or on behalf of the BBC immediately before the preparatory transfer takes effect, or
      - (ii) issued to or for the BBC at a time when the successor company is a wholly-owned subsidiary of the BBC,and which have not previously been disposed of by the BBC.
  - (3) For the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal mentioned in sub-paragraph (2)(b).

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- (4) If the consideration for the disposal mentioned in sub-paragraph (2)(b) consists of or includes a right to any variable deferred consideration, then, for the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal of the right to the variable deferred consideration.
- (5) In this paragraph “variable deferred consideration” means any consideration—
- (a) which is not to be given until after the disposal mentioned in sub-paragraph (2)(b); and
  - (b) whose amount or value, as at the time when it is to be given, is not ascertainable at the time of that disposal.

*No chargeable gain or allowable loss to arise on  
any disposal constituted by a direct disposal transfer*

- 8 (1) For the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on any disposal constituted by a direct disposal transfer.
- (2) If the consideration for a direct disposal transfer consists of or includes a right to any variable deferred consideration, then, for the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal of the right to the variable deferred consideration.
- (3) In this paragraph “variable deferred consideration”, in the case of any direct disposal transfer, means any consideration—
- (a) which is not to be given until after the direct disposal transfer; and
  - (b) whose amount or value, as at the time when it is to be given, is not ascertainable at the time of the disposal constituted by that transfer.

*Chargeable gains: value shifting*

- 9 (1) Nothing in Part VI of this Act, and no instrument or agreement made, or other thing done, under or by virtue of that Part or for the purpose of initiating, advancing or facilitating the disposal by the BBC of—
- (a) the whole or any part of the BBC transmission network, or
  - (b) any shares or securities of a successor company which are shares or securities which were—
    - (i) held by or on behalf of the BBC immediately before a preparatory transfer to the successor company takes effect, or
    - (ii) issued to or for the BBC at a time when the successor company is a wholly-owned subsidiary of the BBC,
 and which have not previously been disposed of by the BBC,
- shall be regarded as a scheme or arrangement for the purposes of section 30 of the Gains Act (value-shifting).
- (2) In any case where—
- (a) an asset which is the subject of a preparatory transfer has previously been the subject of a scheme or arrangements falling within subsection (1) of section 30 of the Gains Act,



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- (b) in consequence, subsection (5) of that section (consideration on disposal to be treated as increased for certain purposes) would, apart from sub-paragraph (3), have had effect in relation to the consideration for the preparatory transfer, and
  - (c) the consideration for the preparatory transfer falls to be determined, for the purposes of corporation tax on chargeable gains, under paragraph 2, sub-paragraph (3) shall apply.
- (3) Where this sub-paragraph applies—
- (a) subsection (5) of section 30 of the Gains Act shall not have effect in relation to the consideration for the preparatory transfer; but
  - (b) on the first subsequent disposal of the asset which is neither a preparatory transfer nor a group disposal—
    - (i) that subsection shall have effect in relation to the consideration for that disposal (whether or not it would otherwise have done so); and
    - (ii) the increase that falls to be made under that subsection shall be so calculated as to include any increase which would, but for paragraph (a) above, have fallen to be made in relation to the preparatory transfer.
- (4) In this paragraph “group disposal” means a disposal which falls to be treated by virtue of section 171(1) of the Gains Act as made for a consideration such that no gain or loss accrues to the person making the disposal.

*Chargeable gains: receipt of compensation or insurance money*

- 10 (1) Subsection (4) of section 23 of the Gains Act (adjustments where compensation or insurance money used for purchase of replacement asset) shall have effect in accordance with sub-paragraph (3) in any case where—
- (a) there is a relevant transfer such that—
    - (i) a capital sum received by the BBC by way of compensation for the loss or destruction of an asset, or under a policy of insurance of the risk of the loss or destruction of an asset, becomes available to the transferee; or
    - (ii) a right of the BBC to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
  - (b) the transferee acquires an asset in circumstances where—
    - (i) had there been no such relevant transfer, and
    - (ii) had the BBC acquired the asset by the application of that sum,the BBC would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (2) Subsection (5) of that section (adjustments where a part of any compensation or insurance money is used for the purchase of a replacement asset) shall have effect in accordance with sub-paragraph (3) in any case where—
- (a) there is a relevant transfer such that—
    - (i) a capital sum received by the BBC by way of compensation for the loss or destruction of an asset, or under a policy of insurance of the risk of the loss or destruction of an asset, becomes available to the transferee; or

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- (ii) a right of the BBC to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
- (b) the transferee acquires an asset in circumstances where—
  - (i) had there been no such relevant transfer, and
  - (ii) had the BBC acquired the asset by the application of all of that sum except for a part which was less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the asset lost or destroyed,
 the BBC would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (3) In a case falling within sub-paragraph (1) or (2) of this paragraph, subsection (4) or, as the case may be, subsection (5) of section 23 of the Gains Act shall have effect as if the transferee and the BBC were the same person, except that—
  - (a) in a case falling within sub-paragraph (1)(a)(i) or (2)(a)(i)—
    - (i) any claim under the subsection in question must be made by the BBC and the transferee; and
    - (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the BBC; and
  - (b) in a case falling within sub-paragraph (1)(a)(ii) or (2)(a)(ii)—
    - (i) any claim under the subsection in question must be made by the transferee; and
    - (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the transferee.

*Loan relationships: disposal of securities by BBC*

- 11 (1) This paragraph applies in any case where—
- (a) there is a preparatory transfer to a successor company;
  - (b) the BBC disposes of any securities of the successor company for a consideration in money or money's worth; and
  - (c) those securities are securities issued to or for the BBC in consideration for the preparatory transfer.
- (2) Where this paragraph applies, any debits or credits which, by reason of the disposal mentioned in sub-paragraph (1)(b), would, apart from this sub-paragraph, be given by [F475 Part 5 of the Corporation Tax Act 2009] in respect of a loan relationship for an accounting period of the BBC shall not be brought into account for the purposes of that Chapter as respects the BBC.

**Textual Amendments**

**F475** Words in *Sch. 7 para. 11(2)* substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(2)* (with *Sch. 2 Pts. 1, 2*)

*Transfer of trade: loss relief and capital allowances*

- 12 (1) This paragraph applies in any case where, as a result of a relevant transfer,—

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- (a) the BBC ceases to carry on a trade; and
  - (b) the transferee begins to carry on that trade.
- (2) Where this paragraph applies, [F476Chapter 1 of Part 22 of the Corporation Tax Act 2010 (transfers of trade] without change of ownership) shall not have effect in relation to the event described in sub-paragraph (1).
- (3) Where this paragraph applies, the trade mentioned in sub-paragraph (1) shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the [F477the Capital Allowances Act]; but—
- (a) there shall be made to or on the transferee in accordance with [F478that Act] all such allowances and charges as would, if the BBC had continued to carry on the trade, have fallen to be made to or on it; and
  - (b) the amount of any such allowance or charge shall be computed as if—
    - (i) the transferee had been carrying on the trade since the BBC began to do so; and
    - (ii) everything done to or by the BBC had been done to or by the transferee (but so that no sale or transfer which on the transfer of the trade is made to the transferee by the BBC of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).
- (4) For the purposes of this paragraph—
- (a) where, on the BBC ceasing to carry on a trade, a company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the company shall be treated as a separate trade, if the effect of so treating it is that this paragraph applies by virtue of sub-paragraph (1) on that event in relation to that separate trade; and
  - (b) where, on the BBC ceasing to carry on part of a trade, a company begins to carry on the activities of that part as its trade or part of its trade, the BBC shall be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that this paragraph applies by virtue of sub-paragraph (1) on that event in relation to that separate trade.

#### Textual Amendments

- F476** Words in Sch. 7 para. 12(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 294(2) (with Sch. 2)
- F477** Words in Sch. 7 para. 12(3) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(3)(a)
- F478** Words in Sch. 7 para. 12(3)(a) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(3)(b)

*Capital allowances: industrial buildings* <sup>F479</sup>. . .

#### Textual Amendments

- F479** Sch. 7 para. 13: words in the cross-heading repealed (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), 580, Sch. 2 para. 97(4)(a), Sch. 4

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- 13 (1) This paragraph applies in any case where there is a relevant transfer of property which is, for the purposes of [F480Part 3 of the Capital Allowances Act (industrial buildings allowances)], the relevant interest in relation to any expenditure incurred on the construction of a building or structure.
- (2) Where this paragraph applies, the Secretary of State may by order make provision specifying, as respects the transferee,—
- (a) the amount which is to be taken for the purposes of [F481Part 3 of the Capital Allowances Act] to be the amount of the capital expenditure incurred on the construction of the building or structure; and
  - (b) the date which is to be taken for the purposes of that Part as the date on which the building or structure was first used.
- (3) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.

#### Textual Amendments

**F480** Words in Sch. 7 para. 13(1) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(4)(b)

**F481** Words in Sch. 7 para. 13(2) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(5)

#### *Capital allowances: [F482plant and machinery]*

#### Textual Amendments

**F482** Sch. 7 para. 14: words in cross-heading substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(6)(a)

- 14 (1) For the purposes of [F483Part 2 of the Capital Allowances Act (plant and machinery allowances)] property which is transferred to a successor company in accordance with a preparatory scheme shall be treated as if—
- (a) it had been acquired by the successor company, for the purposes for which it is used by that company on and after the date on which the transfer of the property in accordance with the scheme takes effect, on that date; and
  - (b) capital expenditure of the prescribed amount had been incurred on that date by the successor company on the acquisition of the property for the purposes mentioned in paragraph (a).
- (2) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.

#### Textual Amendments

**F483** Words in Sch. 7 para. 14(1) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(6)(b)

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*Capital allowances: leased fixtures*

- 15 (1) This paragraph applies to any lease which is granted in pursuance of an obligation imposed by a provision contained in a preparatory scheme by virtue of paragraph 2(1)(g) of Schedule 5.
- (2) Where the conditions in [F484 section 183(1)(a) and (b) of the Capital Allowances Act (incoming lessee where lessor entitled to allowances)] are fulfilled in relation to a lease to which this paragraph applies—
- (a) the lessee shall be deemed for the purposes of [F485 Part 2] of that Act to have given as consideration for the lease a capital sum which falls to be treated for the purposes of that Part as expenditure on the provision of the fixture concerned;
  - (b) the amount of that capital sum shall be the prescribed amount; and
  - (c) [F486 subsection (1)(d)] of that section shall be disregarded.
- (3) Where the conditions in [F487 section 184(1)(a) to (c) of the Capital Allowances Act (incoming lessee where lessor not entitled to allowances)] are fulfilled in relation to a lease to which this paragraph applies—
- (a) the lessee shall be deemed for the purposes of [F488 Part 2] of that Act to have given as consideration for the lease a capital sum which falls to be treated for the purposes of that Part as expenditure on the provision of the fixture concerned; and
  - (b) the amount of that capital sum shall be the prescribed amount.

**Textual Amendments**

**F484** Words in Sch. 7 para. 15(2) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(7)(a)

**F485** Words in Sch. 7 para. 15(2)(a) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(7)(b)

**F486** Words in Sch. 7 para. 15(2)(c) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(7)(c)

**F487** Words in Sch. 7 para. 15(3) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(8)(a)

**F488** Words in Sch. 7 para. 15(3)(a) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(8)(b)

*Capital allowances: connected persons*

- 16 In [F489 Part 2 of the Capital Allowances Act (plant and machinery allowances)] references to a transaction (however described) between connected persons within the meaning of [F490 section 1122 of the Corporation Tax Act 2010] shall not include references to a preparatory transfer.

**Textual Amendments**

**F489** Words in Sch. 7 para. 16 substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 97(9)

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**F490** Words in [Sch. 7 para. 16](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 294\(3\)](#) (with [Sch. 2](#))

*[<sup>F491</sup> Capital allowances: agricultural buildings allowances]*

**Textual Amendments**

**F491** [Sch. 7 para. 17](#) and preceding cross-heading substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\), Sch. 2 para. 97\(10\)](#)

<sup>F492</sup>17(1) This paragraph applies where there is a relevant transfer of property which is the relevant interest in relation to any expenditure for which the BBC would be entitled to an allowance (other than a balancing allowance) under Part 4 of the Capital Allowances Act (agricultural buildings allowances).

- (2) Where this paragraph applies, then, as respects the transferee—
- (a) his acquisition of the relevant interest shall be treated for the purposes of Part 4 of the Capital Allowances Act as a balancing event within subsection (2) (a) of section 381 (regardless of the lack of any election); and
  - (b) section 376(2) shall apply as if—
    - (i) the value to be assigned to RQE (residue of qualifying expenditure immediately after event) were the prescribed amount; and
    - (ii) the value to be assigned to B (remaining writing-down period) were such as the Secretary of state may by order specify.
- (3) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.]

**Textual Amendments**

**F492** [Sch. 7 para. 17](#) and preceding cross-heading substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\), Sch. 2 para. 97\(10\)](#)

*Corporation tax: BBC and successor company to be treated as one for certain purposes*

- 18 (1) If any property, rights or liabilities are transferred to a successor company in accordance with a preparatory scheme, then, subject to sub-paragraph (2), the following provisions shall apply for the purposes of the Corporation Tax Acts in their application in respect of any accounting period ending on or after the date on which the transfer takes effect, namely—
- (a) any trade or part of a trade carried on by the BBC which is transferred in accordance with the preparatory scheme to the successor company shall be treated as having been, at the time of its commencement and at all times since that time, a separate trade carried on by that company;
  - (b) the trade or trades carried on by the successor company on and after the date on which the transfer takes effect shall be treated as the same trade or trades as that which, by virtue of paragraph (a), is treated as carried on before that date;
  - (c) all property, rights and liabilities of the BBC which are transferred in accordance with the scheme to the successor company shall be treated as

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- having been, at the time when they became vested in the BBC and at all times since that time, property, rights and liabilities of that company; and
- (d) anything done by the BBC in relation to property, rights and liabilities which are transferred to the successor company in accordance with the preparatory scheme shall be treated as having been done by that company.

(2) Sub-paragraph (1) shall not apply for the purposes of—

- (a) corporation tax on chargeable gains,  
(b) capital allowances, or  
(c) relief for losses incurred in carrying on a trade,

and no provision included in a scheme by virtue of paragraph 4(2)(a) of Schedule 5 shall have effect for those purposes.

*Corporation tax: no profit or loss under <sup>F493</sup>Part 3 of the Corporation Tax Act 2009] by reason of a direct disposal transfer*

#### Textual Amendments

**F493** Words in Sch. 7 para. 19 cross-heading substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), Sch. 8 para. 294\(4\)](#) (with [Sch. 9 paras. 1-9, 22](#))

- 19 <sup>F494</sup>In determining for the purposes of Part 3 of the Corporation Tax Act 2009 the profits or losses of a trade or part of a trade carried on by the BBC wholly or partly in the United Kingdom, it is to be assumed that no profits or losses arise to the BBC] by reason of a direct disposal transfer of—
- (a) any trading stock, within the meaning of <sup>F495</sup>section 163 of the Corporation Tax Act 2009], belonging to a trade carried on by the BBC;
- (b) any right of the BBC to receive an amount which is for the purposes of corporation tax—
- (i) an amount brought into account as a trading receipt of the BBC for any accounting period ending before the time when the transfer takes effect; or
- (ii) an amount falling to be so brought into account if it is assumed, where it is not the case, that the accounting period of the BBC current on the day before the transfer takes effect ends immediately before that time; or
- (c) the whole or any part of the amount of a liability which falls for the purposes of corporation tax—
- (i) to be brought into account as deductible in computing the profits of any trade carried on by the BBC for any accounting period ending before the time when the transfer takes effect; or
- (ii) to be so brought into account if it is assumed, where it is not the case, that the accounting period of the BBC current on the day before the transfer takes effect ends immediately before that time.

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### Textual Amendments

**F494** Words in Sch. 7 para. 19 substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 294(2)** (with Sch. 9 paras. 1-9, 22)

**F495** Words in Sch. 7 para. 19(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 294(3)** (with Sch. 9 paras. 1-9, 22)

### *Corporation tax: group relief*

- 20 (1) None of the following, namely—
- (a) the existence of the powers of any Minister of the Crown or the BBC under Part VI of this Act or under the documents regulating the BBC,
  - (b) any direction given by a Minister of the Crown under that Part or those documents, so far as that direction relates to a transfer scheme or (in a case where there is a preparatory scheme) to the sale of shares or securities issued by the successor company, or
  - (c) any arrangements (of any kind, whether in writing or not) so far as relating to a transfer scheme or any such sale,
- shall be regarded as constituting arrangements falling within [F496section 154(3) or 155(3) of the Corporation Tax Act 2010] .
- (2) Neither—
- (a) the existence of the powers of any Minister of the Crown or the BBC under Part VI of this Act or under the documents regulating the BBC, nor
  - (b) any direction given as mentioned in sub-paragraph (1)(b),
- shall be regarded as constituting option arrangements [F497within the meaning given by section 173 of the Corporation Tax Act 2010] .
- (3) Any reference in sub-paragraph (1) or (2) to the documents regulating the BBC is a reference to those documents only so far as they have effect in relation to a disposal by the BBC of—
- (a) the whole or any part of the BBC transmission network, or
  - (b) any shares or securities of a successor company,
- or the initiating, advancing or facilitating of any such disposal.
- (4) In this paragraph “Minister of the Crown” has the same meaning as in the Ministers of the M13Crown Act 1975.

### Textual Amendments

**F496** Words in Sch. 7 para. 20(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 294(4)** (with Sch. 2)

**F497** Words in Sch. 7 para. 20(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 294(5)** (with Sch. 2)

### Marginal Citations

**M13** 1975 c. 26.



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*Corporation tax: leases at an undervalue*

- 21 (1) [<sup>F498</sup>Section 222 of the Corporation Tax Act 2009 (lease] granted at an undervalue) shall not apply in the case of any lease which, in accordance with a transfer scheme, is granted—
- (a) to a company which is a transferee under that or any other transfer scheme, or
  - (b) by such a company to the BBC.
- (2) [<sup>F499</sup>Sections 62 to 67 of the Corporation Tax Act 2009 (tenants occupying land for purposes of trade treated as incurring expenses)] shall not apply where there is an amount which would have become chargeable in relation to any land but for subparagraph (1); and, accordingly, references to any such amount shall not be included in references in [<sup>F499</sup>those sections to the taxed receipt] .
- (3) In this paragraph “lease” has the same meaning as in [<sup>F500</sup>Part 4 of the Corporation Tax Act 2009 (see section 291 of that Act)] .

**Textual Amendments**

**F498** Words in Sch. 7 para. 21(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(3)(a) (with Sch. 2 Pts. 1, 2)

**F499** Words in Sch. 7 para. 21(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(3)(b) (with Sch. 2 Pts. 1, 2)

**F500** Words in Sch. 7 para. 21(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 446(3)(c) (with Sch. 2 Pts. 1, 2)

*Corporation tax: sale and lease-back*

- 22 (1) [<sup>F501</sup>Sections 838 and 839 of the Corporation Tax Act 2010] (sale and lease-back: limitation on tax reliefs) [<sup>F502</sup>, and sections 681AD and 681AE of the Income Tax Act 2007 (which make corresponding provision),] shall not apply where the liability of the transferor or of the person associated with that transferor is as a result of—
- (a) the creation, in accordance with a transfer scheme, of any interest or right in favour of a transferee or the BBC;
  - (b) any other transaction for which a transfer scheme provides; or
  - (c) the grant by a company which is a transferee under a transfer scheme (“the relevant company”) to the BBC or to another company which is a transferee (whether under that or any other transfer scheme) of any interest or right, at a time when the relevant company remains a wholly-owned subsidiary of the BBC, in a case where the ability of the relevant company to grant that interest or right derives from the transfer to the company in accordance with a transfer scheme of an estate or interest in land.
- (2) In this paragraph “transferor” has the same meaning as in [<sup>F503</sup>section 835 or 836 of the Corporation Tax Act 2010][<sup>F504</sup>or section 681AA or 681AB of the Income Tax Act 2007] and “associated” shall be construed in accordance with [<sup>F505</sup>section 847 of the Corporation Tax Act 2010][<sup>F506</sup>or section 681AM of the Income Tax Act 2007].

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### Textual Amendments

- F501** Words in Sch. 7 para. 22(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 294(6)** (with Sch. 2)
- F502** Words in Sch. 7 para. 22(1) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **Sch. 8 para. 246(2)** (with Sch. 9 paras. 1-9, 22)
- F503** Words in Sch. 7 para. 22(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 294(7)(a)** (with Sch. 2)
- F504** Words in Sch. 7 para. 22(2) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **Sch. 8 para. 246(3)(a)** (with Sch. 9 paras. 1-9, 22)
- F505** Words in Sch. 7 para. 22(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 294(7)(b)** (with Sch. 2)
- F506** Words in Sch. 7 para. 22(2) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **Sch. 8 para. 246(3)(b)** (with Sch. 9 paras. 1-9, 22)

### *Corporation tax: sale of lease of land*

- 23 (1) [<sup>F507</sup>Chapter 2 of Part 19 of the Corporation Tax Act 2010] (sale and lease-back: taxation of consideration) [<sup>F508</sup>, and Chapter 2 of Part 12A of the Income Tax Act 2007 (which makes corresponding provision),] shall not apply where—
- (a) the assignment of the original lease, and
  - (b) the grant or assignment of the new lease,
- each fall within sub-paragraph (2).
- (2) The assignment of the original lease, or the grant or assignment of the new lease, falls within this sub-paragraph if—
- (a) it is a relevant transfer; or
  - (b) it takes place between the BBC and a successor company at a time when the successor company remains a wholly-owned subsidiary of the BBC; or
  - (c) it takes place between two successor companies at a time when both remain wholly-owned subsidiaries of the BBC.
- (3) The reference in sub-paragraph (1) to the assignment of the original lease and the grant or assignment of the new lease shall be construed in accordance with [<sup>F509</sup>Chapter 2 of Part 19 of the Corporation Tax Act 2010][<sup>F510</sup>, or section 681BA of the Income Tax Act 2007,] and sub-paragraph (2) shall be construed accordingly.

### Textual Amendments

- F507** Words in Sch. 7 para. 23(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 294(8)** (with Sch. 2)
- F508** Words in Sch. 7 para. 23(1) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **Sch. 8 para. 246(4)** (with Sch. 9 paras. 1-9, 22)
- F509** Words in Sch. 7 para. 23(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 294(9)** (with Sch. 2)

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**F510** Words in Sch. 7 para. 23(3) inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 246(5)** (with Sch. 9 paras. 1-9, 22)

### *Corporation tax: leased assets*

- 24 (1) For the purposes of [<sup>F511</sup>Chapter 4 of Part 19 of the Corporation Tax Act 2010] (assets leased to traders and others) [<sup>F512</sup>and Chapter 4 of Part 12A of the Income Tax Act 2007 (which makes corresponding provision),] where the interest of the lessor or the lessee under a lease, or any other interest in [<sup>F513</sup>a relevant asset], is transferred in accordance with a transfer scheme to the BBC or a transferee, the transfer shall be treated as being effected without any capital sum having been obtained in respect of that interest by the BBC or the transferee.
- (2) [<sup>F514</sup>Section 865 of the Corporation Tax Act 2010] (deduction of payment under [<sup>F515</sup>lease of trading asset), and section 681CC of the Income Tax Act 2007 (which makes corresponding provision),] shall not apply to any payments made by the BBC or a company which is a transferee under a transfer scheme if the payments are made—
- (a) under any lease created in favour of the BBC or such a company by virtue of, or in pursuance of an obligation imposed by, a provision contained in a transfer scheme by virtue of paragraph 2 of Schedule 5; or
  - (b) under any lease—
    - (i) which is granted to or by a successor company at a time when it remains a wholly-owned subsidiary of the BBC; and
    - (ii) which is a lease of [<sup>F516</sup>a relevant asset] which at any time before the creation of the lease was used by the BBC for the purposes of a trade carried on by the BBC and which was, when so used, owned by the BBC.
- [<sup>F517</sup>(3) In sub-paragraph (1)—
- “lease” has the meaning given by section 884 of the Corporation Tax Act 2010 or section 681DN of the Income Tax Act 2007, and
  - “relevant asset” has the meaning given by section 885 of the Corporation Tax Act 2010 or section 681DO of the Income Tax Act 2007.]

### **Textual Amendments**

- F511** Words in Sch. 7 para. 24(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 294(10)(a)** (with Sch. 2)
- F512** Words in Sch. 7 para. 24(1) inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 246(6)** (with Sch. 9 paras. 1-9, 22)
- F513** Words in Sch. 7 para. 24(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 294(10)(b)** (with Sch. 2)
- F514** Words in Sch. 7 para. 24(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 294(11)(a)** (with Sch. 2)
- F515** Words in Sch. 7 para. 24(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 246(7)** (with Sch. 9 paras. 1-9, 22)

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**F516** Words in Sch. 7 para. 24(2)(b)(ii) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 294(11)(b)** (with Sch. 2)

**F517** Sch. 7 para. 24(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 246(8)** (with Sch. 9 paras. 1-9, 22)

### *[<sup>F518</sup>Stamp duty and stamp duty land tax]*

#### **Textual Amendments**

**F518** Sch. 7 para. 25 heading substituted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), reg. 1, **Sch. para. 25(2)**

- 25 (1) Stamp duty shall not be chargeable on any agreement or instrument to the extent that it is certified by the Secretary of State to the Commissioners of Inland Revenue as being—
- (a) a restructuring scheme,
  - (b) a restructuring scheme modification agreement, or
  - (c) an instrument giving effect to a restructuring scheme modification agreement,
- or as having been made in accordance with, or in pursuance of an obligation imposed by, a restructuring scheme.
- <sup>F519</sup>(1A) A land transaction which is effected by a restructuring scheme, or effected in accordance with, or in pursuance of an obligation imposed by a restructuring scheme is exempt from charge for the purposes of stamp duty land tax.
- (1B) Relief under sub-paragraph (1A) must be claimed in a land transaction return or an amendment of such a return.]
- (2) No agreement or instrument which is certified as mentioned in sub-paragraph (1) shall be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would be liable, apart from that sub-paragraph; or
  - (b) it has, in accordance with section 12 of the <sup>M14</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (3) Section 12 of the <sup>M15</sup>Finance Act 1895 (collection of stamp duty in cases of property vested by Act or purchased under statutory power) shall not operate to require—
- (a) the delivery to the Commissioners of Inland Revenue of a copy of this Act, or
  - (b) the payment of stamp duty under that section on any copy of this Act,
- and shall not apply in relation to any instrument on which, by virtue of the preceding provisions of this paragraph, stamp duty is not chargeable.
- (4) In this paragraph—
- <sup>F520</sup>“land transaction” has the meaning given in section 43(1) of the Finance Act 2003;
- “land transaction return” has the meaning given by section 76(1) of that Act;]

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“restructuring scheme modification agreement” means a modification agreement, so far as relating to a restructuring scheme;

“restructuring scheme” means a preparatory scheme, so far as it provides for the transfer of property, rights or liabilities in accordance with the scheme—

- (a) from the BBC to a wholly-owned subsidiary of the BBC;
- (b) to the BBC from a wholly-owned subsidiary of the BBC; or
- (c) from one wholly-owned subsidiary of the BBC to another.

#### Textual Amendments

**F519** Sch. 7 para. 25(1A)(1B) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, [Sch. para. 25\(3\)](#)

**F520** Words in Sch. 7 para. 25(4) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, [Sch. para. 25\(4\)](#)

#### Marginal Citations

**M14** 1891 c. 39.

**M15** 1895 c. 16.

#### *Stamp duty reserve tax*

- 26 (1) An agreement to transfer chargeable securities, as defined in section 99 of the <sup>M16</sup>Finance Act 1986, from the BBC to a wholly-owned subsidiary of the BBC shall not give rise to a charge to stamp duty reserve tax if the agreement is made for the purposes of, or for purposes connected with, a restructuring scheme.
- (2) An agreement shall not give rise to a charge to stamp duty reserve tax if the agreement is a restructuring scheme modification agreement.
- (3) In this paragraph “restructuring scheme” and “restructuring scheme modification agreement” have the same meaning as in paragraph 25.

#### Marginal Citations

**M16** 1986 c. 41.

#### *Modifications of transfer schemes*

- 27 (1) If the effect of any transfer scheme is modified in pursuance of a modification agreement, then the Corporation Tax Acts and this Schedule, other than paragraphs 25 and 26, shall have effect as if—
- (a) the scheme originally made had been the scheme as modified; and
  - (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.
- (2) If, in a case falling within sub-paragraph (1), the transfer scheme, as originally made, was a preparatory scheme, the scheme as modified shall be taken to be a preparatory

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scheme, whether or not any company which was a wholly-owned subsidiary of the BBC at the time when the preparatory scheme took effect remains a wholly-owned subsidiary of the BBC at the time when the modification takes effect.

#### *Orders*

- 28 (1) The Secretary of State shall not make an order under this Schedule in relation to any transferee under a transfer scheme except—
- (a) with the consent of the Treasury;
  - (b) after consultation with the BBC; and
  - (c) if the transferee is not a wholly-owned subsidiary of the BBC, after consultation with the transferee.
- (2) Any power of the Secretary of State to make an order under this Part of this Schedule—
- (a) shall be exercisable by statutory instrument; and
  - (b) shall include power to make different provision for different cases, including different provision in relation to different assets or descriptions of assets.

### SCHEDULE 8

Section 136.

#### AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO SERVICES PROVIDED BY BBC COMPANIES

##### *Television services*

- 1 In section 3 of the 1990 Act (licences under Part I) after subsection (3) there is inserted—
- “(3A) Where the Commission are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.”
- 2 (1) Section 5 of that Act (restrictions on the holding of licences) is amended as follows.
- (2) After subsection (2) there is inserted—
- “(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Commission shall give the Secretary of State notice of their intention to do so, specifying the relevant change.”
- (3) After subsection (6B) there is inserted—
- “(6C) The Commission shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.
- (6D) Where the Commission receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.”
- 3 After section 66 of that Act there is inserted—

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**“66A Enforcement of licences held by BBC companies.**

- (1) Where the Commission—
- (a) give a direction to a BBC company under section 40(1),
  - (b) serve a notice on a BBC company under any provision of section 41 or 42, or
  - (c) receive any written representations from a BBC company under section 40(2), 41(3) or 42(8),
- the Commission shall send a copy of the direction, notice or representations to the Secretary of State.
- (2) References in subsection (1) to any of the provisions of sections 40 to 42 are references to that provision as applied—
- (a) by section 42B(2), in relation to a licence to provide a restricted service,
  - (b) by section 44(3), in relation to a licence to provide a domestic satellite service,
  - (c) by section 45(5), in relation to a licence to provide a non-domestic satellite service,
  - (d) by section 47(8), in relation to a licence to provide a licensable programme service, or
  - (e) by section 55(4), in relation to an additional services licence.”

F521 4 .....

**Textual Amendments**

**F521** Sch. 8 para. 4 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)

*Radio services*

5 In section 86 of that Act (licences under Part III) after subsection (4) there is inserted—

“(4A) Where the Authority are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.”

6 (1) Section 88 of that Act (restrictions on the holding of licences) is amended as follows.

(2) After subsection (2) there is inserted—

“(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Authority shall give the Secretary of State notice of their intention to do so, specifying the relevant change.”

(3) After subsection (6B) there is inserted—

“(6C) The Authority shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.

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(6D) Where the Authority receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.”

7 After section 111 of that Act there is inserted—

**“111A Enforcement of licences held by BBC companies.**

Where the Authority—

- (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),

the Authority shall send a copy of the direction, notice or representations to the Secretary of State.”

*Meaning of “BBC company” for purposes of Broadcasting Act 1990*

8 In section 202 of that Act (interpretation), after the definition of “the BBC” there is inserted—

““a BBC company” means—

- (a) any body corporate which is controlled by the BBC, or
- (b) any body corporate in which the BBC or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);”.

F522 SCHEDULE 9

Section 138.

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**Textual Amendments**  
**F522** Sch. 9 repealed (31.7.2017) by Digital Economy Act 2017 (c. 30), ss. 34(2)(b), 118(6); S.I. 2017/765, reg. 2(n)

SCHEDULE 10

Section 148(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS OF BROADCASTING ACT 1990  
RELATING TO DIGITAL TERRESTRIAL BROADCASTING

F523 1

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**Status:** Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.  
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**Textual Amendments**

**F523** Sch. 10 para. 1 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)

- 2 In section 13 of the 1990 Act (prohibition on providing television services without a licence), in subsection (1)—
- (a) for “or (b)” there is substituted “, (b), (c) or (d)”, and
  - (b) after “this Part” there is inserted “ or Part I of the Broadcasting Act 1996 ”.

F524<sub>3</sub> .....

**Textual Amendments**

**F524** Sch. 10 paras. 3-6 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)

F524<sub>4</sub> .....

**Textual Amendments**

**F524** Sch. 10 paras. 3-6 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)

F524<sub>5</sub> .....

**Textual Amendments**

**F524** Sch. 10 paras. 3-6 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)

F524<sub>6</sub> .....

**Textual Amendments**

**F524** Sch. 10 paras. 3-6 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)

- 7 In section 97 of the 1990 Act (prohibition on providing independent radio services without a licence), in subsection (1)—
- (a) after “independent radio service” there is inserted “ or any service falling within section 84(1)(d), (e) or (f)”, and
  - (b) after “this Part” there is inserted “ or Part II of the Broadcasting Act 1996 ”.

F525<sub>8</sub> .....

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**Textual Amendments**

**F525** Sch. 10 para. 8 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)

9 In section 126 of the 1990 Act (interpretation of Part III), at the end of the definition of “sound broadcasting service” there is inserted “ but does not include a radio multiplex service (as defined by section 40(1) of the Broadcasting Act 1996) ”.

10 In section 176 of the 1990 Act (duty to provide advance information about programmes), in subsection (7), in the first column of the table—

- (a) after “Welsh Authority” there is inserted “ and the service referred to in section 57(1A)(a) ”, and
- (b) after “Radio Authority” there is inserted “ , any simulcast radio service (within the meaning of Part II of the Broadcasting Act 1996), and any national digital sound programme service (within the meaning of that Part of that Act) subject to regulation by the Radio Authority ”.

F526 11 .....

**Textual Amendments**

**F526** Sch. 10 paras. 11-14 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)

**PART II**

**OTHER AMENDMENTS OF BROADCASTING ACT 1990**

F526 12 .....

**Textual Amendments**

**F526** Sch. 10 paras. 11-14 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)

F526 13 .....

**Textual Amendments**

**F526** Sch. 10 paras. 11-14 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)

F526 14 .....

**Textual Amendments**

**F526** Sch. 10 paras. 11-14 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)

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F527 15 .....

**Textual Amendments**

F527 S. 15 repealed (11.7.1997) by S.I. 1997/1682, reg. 6(1)

F528 16 .....

**Textual Amendments**

F528 Sch. 10 para. 16 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)

17 In section 71 of the 1990 Act (interpretation of Part I), after the definition of “regional Channel 3 service” there is inserted—  
““restricted service” has the meaning given by section 42A;”.

F529 18 .....

**Textual Amendments**

F529 Sch. 10 paras. 18-20 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)

F529 19 .....

**Textual Amendments**

F529 Sch. 10 paras. 18-20 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)

F529 20 .....

**Textual Amendments**

F529 Sch. 10 paras. 18-20 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)

21 In section 202(1) of the 1990 Act (interpretation)—  
(a) after the definition of “broadcast” there is inserted—  
““a Channel 4 company” means—  
(a) any body corporate which is controlled by the Channel Four Television Corporation, or  
(b) any body corporate in which the Corporation or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);”  
(b) in the definition of “connected”, for “licence” there is substituted “ person ”, and  
(c) after the definition of “programme” there is inserted—

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““an S4C company” means—

- (a) any body corporate which is controlled by the Welsh Authority, or
- (b) any body corporate in which the Welsh Authority or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);”.

**Commencement Information**

**I12** Sch. 10 para. 21 wholly in force: Sch. 10 para. 21 not in force at royal assent, see s. 149(2); Sch. 10 para. 21(a)(c) in force at 1.10.1996 by S.I. 1996/2120, art. 4, **Sch. 1**; Sch. 10 para. 21(b) in force at 1.11.1996 by S.I. 1996/2120, art. 5, **Sch. 2**

<sup>F530</sup>22 .....

**Textual Amendments**

**F530** Sch. 10 paras. 22-25 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)

<sup>F530</sup>23 .....

**Textual Amendments**

**F530** Sch. 10 paras. 22-25 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)

<sup>F530</sup>24 .....

**Textual Amendments**

**F530** Sch. 10 paras. 22-25 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)

<sup>F530</sup>25 .....

**Textual Amendments**

**F530** Sch. 10 paras. 22-25 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)

26 In Schedule 19 to the 1990 Act (the Gaelic Broadcasting Committee: supplementary provisions)—

- (a) in paragraph 8—
  - (i) for “Gaelic Television Fund” there is substituted “ Gaelic Broadcasting Fund ”; and

<sup>F531</sup>(ii) .....

<sup>F532</sup>(b) .....

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#### Textual Amendments

**F531** Sch. 10 para. 26(a)(ii) 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)

**F532** Sch. 10 para. 26(b) 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)

### PART III

#### AMENDMENTS OF OTHER ENACTMENTS

##### *The Welsh Development Agency Act 1975 (c. 70)*

- 27 In section 19 of the Welsh Development Agency Act 1975 (the Agency and the media), in subsection (11)—
- <sup>F533</sup>(a) . . . . .
- (b) in the definition of “relevant licence” for “(as the case may be) Part III of that Act” there is substituted “ III of the Broadcasting Act 1990 or Part I or II of the Broadcasting Act 1996. ”

#### Textual Amendments

**F533** Sch. 10 para. 27(a) 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)

##### *The Representation of the People Act 1983 (c. 2)*

- 28 In section 75 of the Representation of the People Act 1983 (prohibition of expenses not authorised by election agent), in subsection (1)(i), after “Broadcasting Act 1990” there is inserted “ or Part I or II of the Broadcasting Act 1996 ”.
- <sup>F534</sup>29 . . . . .

#### Textual Amendments

**F534** Sch. 10 para. 29 repealed (16.3.2001) by 2000 c. 41, s. 158(2), Sch. 22 (with s. 156(6)); S.I. 2001/222, art. 3

- 30 Without prejudice to the generality of section 20(2) of the <sup>M17</sup>Interpretation Act 1978, any reference in paragraph 28 <sup>F535</sup>. . . to a provision of the Representation of the <sup>M18</sup>People Act 1983 includes a reference to that provision as applied by any regulations made under [<sup>F536</sup>section 7 of the European Parliamentary Elections Act 2002].

#### Textual Amendments

**F535** Words in Sch. 10 para. 30 repealed (16.3.2001) by 2000 c. 41, s. 158(2), Sch. 22 (with s. 156(6)); S.I. 2001/222, art. 3

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**F536** Words in Sch. 10 para. 30 substituted (24.10.2002) by European Parliamentary Elections Act 2002 (2002 c. 24), ss. 15, 18(2), Sch. 3 para. 5

#### Marginal Citations

**M17** 1978 c. 30.

**M18** 1978 c. 10.

#### *The Copyright, Designs and Patents Act 1988 (c. 48)*

31 In section 69 of the Copyright, Designs and Patents Act 1988 (recording for purposes of supervision and control of broadcasts and cable programmes), for subsections (2) and (3) there is substituted—

- “(2) Copyright is not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
  - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
  - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) Copyright is not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
  - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.”

#### Commencement Information

**I13** Sch. 10 para. 31 wholly in force at 1.4.1997; Sch. 10 para. 31 not in force at Royal Assent see s. 149; Sch. 10 para. 31 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 31 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

32 In Schedule 2 to the Copyright, Designs and Patents Act 1988 (rights in performances: permitted acts), in paragraph 17, for sub-paragraphs (2) and (3) there is substituted—

- “(2) The rights conferred by Part II are not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
  - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or

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- (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) The rights conferred by Part II are not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
- (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.”

#### Commencement Information

**I14** Sch. 10 para. 32 wholly in force at 1.4.1997; Sch. 10 para. 32 not in force at Royal Assent see s. 149; Sch. 10 para. 32 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 32 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

## SCHEDULE 11

Section 148(2).

### REPEALS AND REVOCATIONS

#### PART I

##### ENACTMENTS REPEALED

#### Commencement Information

**I15** Sch. 11 Pt. I wholly in force at 1.4.1997; Sch. 11 Pt. I in force for certain purposes at 24.7.1996 see s. 149; Sch. 11 Pt. I in force for certain further purposes at 1.10.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 11 Pt. I in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

Chapter	Short title	Extent of repeal
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Broadcasting Complaints Commission, the Broadcasting Standards Council and Comataidh Telebhisein Gaidhlig.
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Broadcasting Complaints

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1990 c. 42.	The Broadcasting Act 1990.	<p>Commission and the Broadcasting Standards Council.</p> <p>In section 2, in subsection (1) (a), the second “and” and, in subsection (4), in paragraph (b) of the definition of “television programme service”, the word “or”.</p> <p>In section 32, in subsection (9), paragraph (b) and the word “and” immediately preceding it, in subsection (10) the words from “and for this purpose” onwards and in subsection (13)(a), the word “and”.</p> <p>Section 45 (8) and (9).</p> <p>Section 47 (11) and (12).</p> <p>In section 72(2)(d), the word “and”.</p> <p>In section 84(1)(b), the word “and”.</p> <p>Section 104(5) and (6)(a).</p> <p>Sections 142 to 161.</p> <p>Section 182.</p> <p>In section 202(2), paragraph (a) and, in paragraph (b), the words “13,14”.</p> <p>In Schedule 2, in Part I, paragraphs 1(4) and 2(2) and (3) and, in Part II, in paragraph 1(2)(e), the word “or” and paragraph 5(c) and (d).</p> <p>Schedules 13 and 14.</p> <p>In Schedule 19, paragraph 3.</p> <p>In Schedule 20, paragraph 50.</p>
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## PART II

### SUBORDINATE LEGISLATION REVOKED

#### Commencement Information

**I16** Sch. 11 Pt. II wholly in force at 1.4.1997; Sch. 11 Pt. II not in force at Royal Assent see s. 149; Sch. 11 in force for certain purposes at 1.10.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 11 Pt. II in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

Number	Title	Extent of revocation
S.I. 1991/1176.	The Broadcasting (Restrictions on the Holding of Licences) Order 1991.	Article 2, and Parts II, III and IV.
S.I. 1991/1246.	The Cable (Excepted Programmes) Order 1991.	The whole order.
S.I.1993/3199.	The Broadcasting (Restrictions on the Holding of Licences) (Amendment) Order 1993.	The whole order.
S.I. 1995/1924.	The Broadcasting (Restrictions on the Holding of Licences) (Amendment) Order 1995.	The whole order.

**Status:**

Point in time view as at 25/10/2019. This version of this Act contains provisions that are prospective.

**Changes to legislation:**

Broadcasting Act 1996 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.