



Broadcasting Act 1996

1996 CHAPTER 55

PART II

DIGITAL TERRESTRIAL SOUND BROADCASTING

Digital additional services provided on sound broadcasting frequencies

63 Digital additional services

- (1) In this Part “digital additional service” means any service which—
 - (a) is provided by any person with a view to its being broadcast in digital form by means of a radio multiplex service, whether by him or by some other person, but
 - (b) is not a digital sound programme service, a simulcast radio 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 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, and
 - (b) is of a description specified in an order made by the Secretary of State.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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—
 - (a) be made in such manner as the Authority may determine, and
 - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, the Authority 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 the Authority 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 the Authority 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).

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 the Authority to be appropriate for requiring the holder of the licence—
 - (a) on entering into any agreement with the holder of a radio multiplex licence for the provision of digital additional services to be broadcast by means of a radio multiplex service, to notify the Authority—
 - (i) of the identity of the radio 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 the Authority of the variation so far as relating to those matters, and
 - (c) where he is providing digital additional services to the holder of a radio multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Authority of that fact.

66 Enforcement of digital additional services licences

- (1) If the Authority 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 the Authority 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 the Authority,
 - (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

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- (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 whichever is the greater of—
- (a) £50,000, and
 - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
- (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital additional services licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to national radio multiplex services in respect of relevant accounting periods (as determined in accordance with section 57), and
 - (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) Where the holder of a digital additional services licence has not provided any digital additional services for broadcasting by means of a national radio multiplex service, the amount of any penalty imposed on him under subsection (1)(a) shall not exceed £50,000.
- (5) In subsection (3) “relevant accounting period”, in relation to a national radio multiplex service, means the last accounting period of the holder of the national radio multiplex licence.
- (6) Where, in the case of any national radio multiplex service, the first accounting period of the holder of the national radio multiplex licence throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting by means of the radio multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) the share of multiplex revenue attributable to the holder of the digital additional services licence in relation to that radio multiplex service for the relevant accounting period shall be taken to be the amount which the Authority estimate to be the share of multiplex revenue attributable to him for the first period.
- (7) The Authority 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), the Authority 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 the Authority 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 apology or not to repeat programme) and section 111 (power to revoke licences) of the 1990 Act shall apply in relation to a digital additional

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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 the Authority 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 the Authority of their powers under section 109 of the 1990 Act in respect of that failure.