



# Broadcasting Act 1996

## 1996 CHAPTER 55

### PART III

#### AMENDMENTS OF THE BROADCASTING ACT 1990

##### *Regional Channel 3 services*

#### **74 Provision of news programmes by holders of regional Channel 3 licences**

- (1) With respect to the broadcasting of news programmes on and after 1st January 1998, section 31 of the 1990 Act (provision of news on Channels 3 and 5) is amended as follows.
- (2) In subsection (2)—
  - (a) at the beginning there is inserted “For the purpose of securing the nationwide broadcast, by holders of regional Channel 3 licences (taken together), of news programmes which are able to compete effectively with other news programmes broadcast nationwide in the United Kingdom,”
  - (b) for “a nominated news provider” there is substituted “the appointed news provider”, and
  - (c) in paragraph (b), for “the same nominated” there is substituted “the appointed”.
- (3) For subsection (3) there is substituted—
  - (3) In subsection (2) “appointed news provider” means, subject to subsection (4), the body corporate for the time being appointed for the purposes of subsection (2), from among the bodies corporate nominated by the Commission under section 32, in accordance with conditions included by virtue of section 31A in regional Channel 3 licences.
  - (4) A body corporate ceases by virtue of this subsection to be the appointed news provider if its nomination is terminated by the Commission under any provision of section 32.”

## 75 Appointment of news provider by holders of regional Channel 3 licences

(1) After section 31 of the 1990 Act there is inserted—

### **“31A Appointment of news provider by holders of regional Channel 3 licences**

A regional Channel 3 licence shall include conditions requiring the holder of the licence to do all that he can to ensure—

- (a) that arrangements are made between all holders of regional Channel 3 licences (“the relevant licence holders”) for the appointment by them, from among the bodies corporate nominated by the Commission under section 32, and on such terms as the relevant licence holders may agree, of a single body corporate to be the appointed news provider for the purposes of section 31(2), and
- (b) that, so long as he provides his licensed service, an appointment for the purposes of section 31(2) is in force.”

(2) The Independent Television Commission may not include in pursuance of section 31A of the 1990 Act any condition in a regional Channel 3 licence (within the meaning of Part I of the 1990 Act) which would require an appointment for the purposes of section 31(2) of that Act (as amended by this Act) to take effect before 1st January 1998.

## 76 Nomination by Commission for purposes of section 31(2) of Broadcasting Act 1990

(1) Section 32 of the 1990 Act (nomination of bodies to provide news for regional Channel 3 services) is amended in accordance with subsections (2) to (5).

(2) For subsections (1) to (6) there is substituted—

“(1) With a view to enabling them to nominate bodies corporate as eligible for appointment for the purposes of section 31(2), the Commission shall invite bodies appearing to them to be qualified for nomination to make applications to be so nominated.

(2) Where a body corporate—

- (a) applies to the Commission (whether in pursuance of any such invitation or not) to be nominated under this section as a nominated news provider, and
  - (b) appears to the Commission to be qualified for nomination,
- the Commission shall so nominate that body.

(3) Subject to subsection (5), any nomination made by the Commission under this section shall remain in force for a period of ten years, and at the end of that period may be renewed by the Commission for a further period of ten years.

(4) Where the Commission are notified by the holders of licences to provide regional Channel 3 services that the appointment of the appointed news provider is due to expire, or to be renewed or terminated in accordance with the terms of the appointment, the Commission shall review the qualification for nomination of all nominated news providers (including the appointed news provider).

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- (5) If on any such review it appears to the Commission that a body is no longer qualified for nomination they shall (subject to subsection (6)) by notice terminate that body's nomination.
- (6) The Commission shall not terminate a body's nomination under subsection (5) unless they have given the body a reasonable opportunity of making representations to them about the proposed termination."
- (3) In subsection (9), paragraph (b) is omitted.
- (4) In subsection (12), for the words from "appearing", where second occurring, onwards there is substituted "which—
- (a) in their opinion is or, if appointed, would be effectively equipped and adequately financed to provide high quality news programmes for broadcasting in regional Channel 3 services; and
- (b) appears to them not to be disqualified for being nominated under this section by virtue of this subsection."
- (5) In subsection (13)—
- (a) in paragraph (b), after "section", where second occurring, there is inserted "as eligible for appointment", and
- (b) after paragraph (b) there is inserted—
- "and
- (c) references to the appointed news provider are references to the person for the time being appointed for the purposes of section 31(2) under the arrangements referred to in section 31A(a)."
- (6) Subsections (2), (4) and (5) do not affect the application of section 32 of the 1990 Act before 1st January 1998 in relation to nomination for the purposes of section 31(2) of that Act as originally enacted.

**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 Restrictive Trade Practices Act 1976 ("the 1976 Act"), the Director General of Fair Trading shall report to the

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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 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 is 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.”
- (2) Subsection (1) shall not apply in relation to any agreement (within the meaning of the Restrictive Trade Practices Act 1976) made for the purposes of the provision of news programmes by a nominated news provider under section 31(2) of the 1990 Act as originally enacted.

## **78 Variation of regional Channel 3 licence following change of control**

- (1) After section 21 of the 1990 Act there is inserted—

### **“21A Variation of regional Channel 3 licence following change of control**

- (1) Any regional Channel 3 licence granted to a body corporate after the commencement of this section shall include—

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- (a) a condition requiring the body to give the Commission advance notice of any proposals known to the body that may give rise to a relevant change of control, and
  - (b) a condition requiring the licence holder to provide the Commission, in such manner and at such times as they may reasonably require, with such information as they may require for the purposes of exercising their functions under this section.
- (2) Subsections (3) and (4) have effect where—
- (a) in pursuance of a condition in a regional Channel 3 licence the Commission receive notice of any proposals that may give rise to a relevant change of control, or
  - (b) a relevant change of control takes place in relation to a body corporate which holds a regional Channel 3 licence (whether or not that change has been previously notified to the Commission).
- (3) If it appears to the Commission that the relevant change of control is or would be prejudicial to one or more of the following matters, namely—
- (a) the quality or range of regional programmes included in the service,
  - (b) the quality or range of other programmes included in the service which contribute to the regional character of the service, or
  - (c) the quality or range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1),
- then, with a view to ensuring that the relevant change of control is not prejudicial to any of those matters, the Commission shall vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of those matters as they consider appropriate.
- (4) If it appears to the Commission that, having regard to the effect, or likely effect, of the relevant change of control on—
- (a) the time given, in the programmes included in the service—
    - (i) to regional programmes, or
    - (ii) to programmes of the kind mentioned in subsection (3)(b),
  - (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided,
  - (c) the extent of the use in connection with the service—
    - (i) of offices or studios situated within the area for which the service is provided, or
    - (ii) of the services of persons employed (whether by the licence holder or any other person) within that area, or
  - (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area,

the relevant change of control is or would be prejudicial to the regional character of the service, the Commission may vary the licence, by a notice served on the licence holder, so as to include in the licence such conditions relating to any of the matters specified in paragraphs (a), (b), (c) and (d) as they consider appropriate.

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(5) Subject to subsection (6), any new or varied condition imposed under subsection (3) or (4) in relation to any matter specified in that subsection may be more onerous than any existing conditions relating to that matter; and in this subsection “existing condition” means a condition of the licence as it has effect, or had effect, before the relevant change of control.

(6) The Commission may not under subsection (3) or (4) include any new or varied condition in a licence unless the new condition or the condition as varied is one which (with any necessary modifications) would have been satisfied by the licence holder—

- (a) during the three months immediately before the relevant date, or
- (b) if the Commission consider that the performance of the licence holder during that period is not typical of its performance during the twelve months before the relevant date, during such other period of three months during those twelve months as they may notify in writing to the licence holder;

and for the purposes of this subsection “the relevant date” is the date of the relevant change of control or, if earlier, the date on which the Commission exercise their powers under subsection (3) or (4).

(7) The Commission shall not serve a notice on any body under subsection (3) or (4) unless they have given it a reasonable opportunity of making representations to them about the variation.

(8) Where, in a case falling within subsection (2)(a), a notice under subsection (3) or (4) varying a licence is served before the change to which it relates takes place, the variation shall not take effect until the change takes place.

(9) In this section—

“regional programme”, in relation to any regional Channel 3 service, means any programme (including a news programme) which is of particular interest—

- (a) to persons living within the area for which the service is provided,
- (b) to persons living within any part of that area, or
- (c) to particular communities living within that area;

“relevant change of control” means a change in the persons having control over—

- (a) the body holding the licence, or
- (b) any body which is connected with that body and appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service.”

(2) Any regional Channel 3 licence (within the meaning of Part I of the 1990 Act) granted before the commencement of this section shall, as from that commencement, be taken to include the conditions referred to in section 21A(1)(a) and (b) of the 1990 Act.

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

(1) Section 39 of the 1990 Act (networking arrangements between holders of regional Channel 3 licences) is amended as follows.

(2) After subsection (9) there is inserted—

“(9A) The matters to which the Commission shall have regard in deciding whether to approve any arrangements or modification under subsection (4) or (8) include the likely effect of the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, on the ability of the holders of regional Channel 3 licences to maintain the quality and range—

- (a) of the regional programmes (as defined by section 21A(9)) included in each regional Channel 3 service, and
- (b) of the other programmes included in each service which contribute to the regional character of the service.”

(3) For subsection (10) there is substituted—

“(10) Without prejudice to the generality of their power to refuse to approve any arrangements or modification under subsection (4) or (8), the Commission shall refuse to do so if—

- (a) they are not satisfied that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be appropriate for the purpose mentioned in subsection (1), or
- (b) it appears to them that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be likely to prejudice the ability of the holder of any regional Channel 3 licence to comply with—

- (i) any condition imposed in pursuance of section 33(1), for the purpose of securing the implementation of proposals relating to the matters specified in section 16(2)(c), or
- (ii) any condition imposed in pursuance of subsection (3) of section 21A in relation to the matters specified in paragraph (a) of that subsection.”