

Changes to legislation: Broadcasting Act 1996, SCHEDULE 2 is up to date with all changes known to be in force on or before 07 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) View outstanding changes

SCHEDULES

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.

(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”,

^{F1}(d)

^{F1}(e)

^{F1}(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,

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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
- (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

- F1** 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

- II** 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) ”.

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(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)—

- (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

I2 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

I3 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

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Textual Amendments

F2 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)

F35

Textual Amendments

F3 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)

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);”.

F4(3)

Textual Amendments

F4 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

I4 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

I5 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—

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“ 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.
- (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

I6 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

^{F5}10

Textual Amendments

F5 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

^{F6}11

Textual Amendments

F6 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)

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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)—
- (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—

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- “(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 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)”.

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 97(1)-(2A) substituted for s. 97(1)(2) by [2003 c. 21 s. 299\(1\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)
- s. 97(5A)(5B) inserted by [2003 c. 21 s. 299\(4\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)
- s. 101(1)-(1D) substituted for s. 101(1) by [2003 c. 21 s. 300\(2\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)
- s. 101(5) inserted by [2003 c. 21 s. 300\(4\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)