



# Digital Economy Act 2010

## 2010 CHAPTER 24

### *Independent television services*

#### **24 Determination of Channel 3 licence areas**

- (1) In section 14 of the Broadcasting Act 1990 (establishment of Channel 3)—
- (a) omit subsection (7) (restriction on providing a single Channel 3 service for the whole of England or the whole of Scotland), and
  - (b) after that subsection insert—

“(7A) The areas mentioned in subsection (2) must at all times include at least one area that comprises, or falls entirely within, Scotland.”
- (2) Section 216 of the Communications Act 2003 (renewal of Channel 3 and 5 licences) is amended as follows.
- (3) For subsection (4) substitute—
- “(4) Where OFCOM receive an application under this section for the renewal of a licence they must—
    - (a) decide whether to renew the licence; and
    - (b) notify the applicant of their decision.
  - (4A) If OFCOM decide to renew the licence they must—
    - (a) in the case of a licence to provide a Channel 3 service, determine in accordance with section 216A the area for which the licence will be renewed;
    - (b) in every case, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
    - (c) notify the applicant of their determinations.”
- (4) After subsection (6) insert—
- “(6A) OFCOM may also decide not to renew a licence to provide a Channel 3 service if, for the licensing period in question, they have renewed or propose to renew

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one or more other licences to provide a Channel 3 service for all of the area to which the licence relates.”

- (5) In subsection (8)(a) for “subsection (4)(c)” substitute “ subsection (4A)(c) ”.
- (6) In subsection (10) for the words from “, in accordance” to the end substitute “—
  - (a) to any determination under subsection (4A)(a);
  - (b) in accordance with the determination under subsection (4A)(b), to the requirements imposed by section 217(4).”
- (7) After section 216 of that Act insert—

**“216A Renewal of Channel 3 licences: determination of licence areas**

- (1) This section applies if OFCOM decide under section 216(4) to renew a licence to provide a Channel 3 service.
- (2) The area determined under section 216(4A)(a) for the licence—
  - (a) must include all or part of the area to which the licence being renewed currently relates, and
  - (b) may include all or part of another area if the holder of the licence to provide a Channel 3 service for the other area gives (and does not withdraw) consent before the determination is made.”
- (8) In section 217(1) of that Act, in the opening words, for “section 216(4)(b)” substitute “ section 216(4A)(b) ”.

**25 Initial expiry date for Channel 3 and 5 and public teletext licences**

- (1) Section 224 of the Communications Act 2003 (initial expiry date for licences) is amended as follows.
- (2) For subsection (1) (meaning of “initial expiry date”) substitute—
  - “(1) Subject to any postponement under this section, for the purposes of this Part the initial expiry date for the following types of licence is 31 December 2014—
    - (a) a licence to provide a Channel 3 service;
    - (b) a licence to provide Channel 5;
    - (c) the licence to provide the public teletext service.”
- (3) In subsection (2) (power to postpone initial expiry date), at the end insert “ for one or more of the types of licence mentioned in subsection (1) ”.
- (4) Omit subsection (3) (no postponement if digital switchover is to occur before 1 July 2013).

**26 Initial expiry date: consequential provision**

- (1) Chapter 2 of Part 3 of the Communications Act 2003 (regulatory structure for independent television services) is amended as follows.
- (2) In each of sections 214(6) and 216(12) (definition of “licensing period” for Channels 3 and 5)—

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- (a) in the opening words, after “licensing period” insert “ , in relation to a licence , ”,
  - (b) in paragraph (a), at the end (but before “or”) insert “ for that type of licence ”, and
  - (c) in paragraph (b), at the end insert “ for that type of licence ”.
- (3) In each of sections 219(3) and 222(12) (definition of “licensing period” for public teletext service)—
- (a) in paragraph (a), at the end (but before “or”) insert “ for the licence to provide the public teletext service ”, and
  - (b) in paragraph (b), at the end insert “ for that type of licence ”.
- (4) In section 225(3) (period for review of financial terms of replacement Channel 3 and 5 and public teletext licences), after “initial expiry date” insert “ for that type of licence ”.
- (5) In section 228(8) (giving effect to review of financial terms of replacement licence), in the definition of “licensing period”—
- (a) after “ “licensing period”” insert “ , in relation to a licence , ”,
  - (b) in paragraph (a), at the end (but before “or”) insert “ for that type of licence ”, and
  - (c) in paragraph (b), at the end insert “ for that type of licence ”.
- (6) Section 229 (report in anticipation of new licensing round) is amended as follows.
- (7) In subsection (1), after “licensing period” insert “ for a type of relevant licence ”.
- (8) In subsection (2)—
- (a) for “holders of relevant licences” substitute “ holder or holders of that type of licence ”, and
  - (b) for “licence holders” substitute “ licence holder or holders ”.
- (9) In subsection (3)(a) and (b), for “relevant licences” substitute “ that type of licence ”.
- (10) After subsection (4) insert—
- “(4A) Subsection (5) applies where the Secretary of State—
- (a) receives a report under this section in anticipation of the end of a licensing period for a type of relevant licence, and
  - (b) subsequently makes an order under section 224 extending the licensing period for that type of licence.”
- (11) In subsection (5)—
- (a) for the words from the beginning to “the order—” substitute “ Where this subsection applies— ”, and
  - (b) in paragraph (a), for “he” substitute “ the Secretary of State ” and at the end (but before “and”) insert “ for that type of licence ”.
- (12) In subsection (6), in the definition of “licensing period”—
- (a) in the opening words, after “ “licensing period”” insert “ , in relation to a licence , ”,
  - (b) in paragraph (a), at the end (but before “or”) insert “ for that type of licence ”, and
  - (c) in paragraph (b), at the end insert “ for that type of licence ”.

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- (13) Section 230 (orders suspending rights of renewal) is amended as follows.
- (14) In subsection (2), for “licences for the time being in force that are of a description specified in the order are” substitute “ a licence for the time being in force that is of a description specified in the order is ”.
- (15) In that subsection, at the end insert “ (but see subsection (7)) ”.
- (16) In each of subsections (3), (4), (5) and (8)(b), for “licences” substitute “ a licence ”.
- (17) In subsection (7), for “Channel 3 licences” substitute “ a Channel 3 licence ”.
- (18) In subsection (11), in the definition of “initial licensing period”—
  - (a) after “ “initial licensing period”” insert “ , in relation to a licence, ”, and
  - (b) at the end (but before “and”) insert “ for that type of licence ”.

## **27 Report by OFCOM on public teletext service**

After section 218 of the Communications Act 2003 insert—

### **“218A Duty to report on public teletext service**

- (1) OFCOM must—
  - (a) prepare a report on the public teletext service, and
  - (b) send it to the Secretary of State as soon as practicable after this section comes into force.
- (2) OFCOM must prepare and send to the Secretary of State further reports on the public teletext service when asked to do so by the Secretary of State.
- (3) Each report must include, in particular—
  - (a) an assessment of the advantages and disadvantages for members of the public of the public teletext service being provided, and
  - (b) an assessment of whether the public teletext service can be provided at a cost to the licence holder that is commercially sustainable.
- (4) An assessment under subsection (3)(a) must take account of alternative uses for the capacity that would be available if the public teletext service were not provided.
- (5) OFCOM must publish every report under this section—
  - (a) as soon as practicable after they send it to the Secretary of State, and
  - (b) in such manner as they consider appropriate.
- (6) “Capacity” means capacity on the frequencies on which Channel 3 services, Channel 4, S4C and television multiplex services are broadcast.”

## **28 Power to remove OFCOM's duty to secure provision of public teletext service**

- (1) Section 218 of the Communications Act 2003 (provision of public teletext service) is amended as follows.
- (2) In subsection (1)—
  - (a) for “must do all that they can to” substitute “ may ”, and

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- (b) at the end insert “ and complies with this section ”.
- (3) In subsection (7)—
- (a) for “OFCOM must exercise their powers” substitute “ If there is a public teletext provider, OFCOM must take account of the requirements of the public teletext service when exercising their powers ”, and
  - (b) omit the words after paragraph (b).
- (4) Accordingly, in the heading of the section, for “Duty” substitute “ Power ”.
- (5) Omit section 221 of that Act (replacement of existing public teletext provider's licence).
- (6) In section 276(1) of that Act (co-operation with the public teletext provider), for “the provider of the service or channel” substitute “ , if there is a public teletext provider, the provider of the Channel 3 service or Channel 4 ”.
- (7) In section 362 of that Act (interpretation of Part 3), in the definition of “the public teletext service”, for “is required to be” substitute “ is or may be ”.
- (8) The amendments made by this section and the entries in Schedule 2 relating to sections 218(7) and 221 of the Communications Act 2003 (and section 45 so far as relating to those entries) come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (9) An order may not be made under subsection (8) unless—
- (a) condition A or B is met,
  - (b) the Secretary of State is satisfied that making the order is in the public interest, and
  - (c) a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Condition A is that the Secretary of State has laid before Parliament a report by the Office of Communications (“OFCOM”) under section 218A of the Communications Act 2003 (report on public teletext service).
- (11) Condition B is that OFCOM have invited applications for the licence to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003) and—
- (a) no applications were made by the closing date, or
  - (b) OFCOM considered that they could not award the licence to any of the applicants.

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**Commencement Information**

**II** S. 28 partly in force; s. 28(8)-(11) in force at 8.6.2010 see ss. 28(8), 47(1)

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VALID FROM 22/06/2011

**29 Broadcasting of programmes in Gaelic**

- (1) Omit section 184 of the Broadcasting Act 1990 (broadcasting of programmes in Gaelic on Channel 3 in Scotland).
- (2) Accordingly, omit section 183A(7)(a) and (b) of that Act (representation in Gaelic Media Service of interests of holders of certain licences).

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