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STATUTORY INSTRUMENTS

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**1996 No. 2760**

**BROADCASTING**

**The Independent Analogue Broadcasters  
(Reservation of Digital Capacity) Order 1996**

<i>Made</i>	- - - -	<i>30th October 1996</i>
<i>Laid before Parliament</i>		<i>30th October 1996</i>
<i>Coming into force</i>	- -	<i>20th November 1996</i>

In exercise of the powers conferred on her by sections 28(3) and (6) of the Broadcasting Act 1996<sup>(1)</sup> and section 200 of the Broadcasting Act 1990<sup>(2)</sup>, the Secretary of State hereby makes the following Order:

**PART I**  
**PRELIMINARY**

**Citation, commencement and interpretation**

**1.—(1)** This Order may be cited as the Independent Analogue Broadcasters (Reservation of Digital Capacity) Order 1996 and shall come into force on 20th November 1996.

**(2)** In this Order—

- (a) “the 1990 Act” means the Broadcasting Act 1990;
- (b) “the 1996 Act” means the Broadcasting Act 1996;
- (c) “the C3/C4 multiplex licence” means the licence to provide a multiplex service on the frequency designated by the Secretary of State, pursuant to section 28(2) of the 1996 Act, as one of the frequencies to which section 28 applies and in relation to which 48.5 per cent. of the digital capacity is reserved for the Channel 3 companies, 48.5 per cent. for Channel Four and 3 per cent. for the public teletext provider;
- (d) “the C5/S4C multiplex licence” means the licence to provide a multiplex service on the frequency designated by the Secretary of State, pursuant to section 28(2) of the 1996 Act, as one of the frequencies to which section 28 applies and in relation to which 50 per cent. of the digital capacity is reserved for the holder of the Channel 5 licence throughout the

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(1) 1996 c. 55.  
(2) 1990 c. 46.

United Kingdom and 50 per cent. of the digital capacity is reserved for the Welsh Authority for the purposes of broadcasts which may be received wholly or mainly in Wales;

- (e) “acquisition” includes acquisition on hire or loan;
- (f) “Channel Four” means the Channel Four Television Corporation;
- (g) “the Channel 3 companies” means the holders of national or regional Channel 3 licences; and
- (h) “controlled” shall be construed in accordance with Part I of Schedule 2 to the 1990 Act; and
  - (i) “qualifying company” has the same meaning as in section 24(6) of the 1990 Act.

(3) For the purposes of any provision of this Order which refers to a body corporate controlled by two or more persons taken together, the persons in question shall not be regarded as controlling the body corporate by virtue of sub-paragraph 2(h) unless they are acting together in concert.

## PART II

### THE C3/C4 MULTIPLEX LICENCE

#### **Disapplication of 1996 Act**

2. Sections 7, 8, 9 and 10 of the 1996 Act shall not apply to the C3/C4 multiplex licence except as provided in articles 3 and 4, which shall have effect in place of those provisions.

#### **Applications for the Licence**

3.—(1) Where the Commission propose to grant the C3/C4 multiplex licence, they shall publish, in such manner as they consider appropriate, a notice—

- (a) inviting an application for the licence and specifying the closing date for such an application;
- (b) specifying the frequency on which the service is to be provided and the area or areas in the United Kingdom in which the frequency is to be available;
- (c) stating that no percentage of multiplex revenue would be payable by the applicant in pursuance of section 13 of the 1996 Act if he were granted the licence, and
- (d) containing general guidance as to requirements to be met by proposals as to the matters referred to in paragraphs (i) and (ii) of sub-paragraph (2)(a) and in sub-paragraph (2)(e), and such other general guidance as they consider appropriate.

(2) An application for the C3/C4 multiplex licence may be made only by a body corporate controlled by the Channel 3 companies and Channel Four taken together and must be in writing and accompanied by—

- (a) a technical plan relating to the service which the applicant proposes to provide and indicating—
  - (i) the proposed 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;
- (b) 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;

- (c) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of those services would begin;
  - (d) the applicant's proposals as to the broadcasting of digital additional services;
  - (e) 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;
  - (f) the applicant's proposals for the broadcasting and reception of the Channel 3 services and Channel 4 in digital form and of the qualifying teletext service;
  - (g) such information as the Commission 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 the Commission may reasonably require for the purpose of considering the application.
- (3) At any time after receiving such an application and before determining it, the Commission may require the applicant to furnish additional information under paragraph (2).
- (4) Any information to be furnished to the Commission under paragraphs (2) and (3) shall, if they so require, be in such form or verified in such manner as they may specify.
- (5) The Commission shall, as soon as reasonably practicable after the date specified under paragraph (1) as the closing date for an application, publish in such manner as they consider appropriate—
- (a) the name of the person who has made that application to them;
  - (b) the proposals submitted by him under sub-paragraph (2)(b); and
  - (c) such other information connected with his application as the Commission consider appropriate.

#### **Award of Licence**

- 4.—(1) Where an application for the C3/C4 multiplex licence has been duly made to the Commission in accordance with article 3(2), they may only (subject to sections 3(3) and 5(1) of the 1996 Act) refuse the application if they are not satisfied that—
- (a) the proposed service would comply with the requirements specified in article 3(1);
  - (b) the applicant would be able to maintain that service throughout the period for which the licence would be in force;
  - (c) the applicant would not charge viewers for the reception of any qualifying service; or
  - (d) the arrangements proposed for the broadcasting of the qualifying teletext service would meet the reasonable requirements of the public teletext provider in relation to the provision of that service.
- (2) Where the Commission have awarded the C3/C4 multiplex licence to any person in accordance with this article, 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 the Commission consider appropriate; and
  - (b) grant the licence to that person.

### **Modifications of 1996 Act**

5.—(1) Sections 11, 12, 13 and 16 of the 1996 Act shall apply to the C3/C4 multiplex licence with the omissions and modifications set out in this article.

(2) Section 11 of the 1996 Act shall apply to the C3/C4 multiplex licence with the omission of section 11(3)(b) and (4).

(3) Section 12 of the 1996 Act shall apply to the C3/C4 multiplex licence with the following modifications:—

- (a) as if the references in section 12 to sections 7(4)(b), (c), (d), (e) and (f) were references to sub-paragraphs (a), (b), (c), (d) and (e) of article 3(2), and
- (b) with the omission of section 12(1)(f).

(4) The C3/C4 multiplex licence shall also include such conditions as appear to the Commission to be appropriate for securing the broadcasting of the Channel 3 services and Channel 4 in digital form and of the qualifying teletext service.

(5) Section 13(1) of the 1996 Act shall apply to the C3/C4 multiplex licence as if it had been granted in pursuance of a notice under section 7(1) of that Act.

(6) Sections 13(2) and (3) of the 1996 Act shall not apply to the C3/C4 multiplex licence.

(7) Section 16 of the 1996 Act shall apply to the C3/C4 multiplex licence with the following modifications:—

- (a) as if the references to section 7(1) were references to article 3(1) and the references to paragraph (f) of section 7(1) were references to sub-paragraph (c) of article 3(1);
- (b) as if the reference to section 7(2)(b) were omitted;
- (c) as if the references to section 7(4)(b) and (f) were references to sub-paragraphs (a) and (e) of article 3(2);
- (d) as if section 16(8) were omitted and replaced by—

““On the grant of such an application the Commission may, with the consent of the Secretary of State, and shall if so required by him, specify a percentage 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.”; and”

- (e) as if section 16(9) were omitted.

### **Variation of Channel 3 and Channel Licences**

6.—(1) The Commission shall vary the licences under which the Channel 3 services and Channel 4 are provided in analogue form so as to include such conditions as appear to the Commission to be appropriate for imposing on the holders of such licences, in specified circumstances, an obligation to provide the relevant qualifying service and such other consequential and transitional provisions as the Commission may consider appropriate.

(2) The Commission shall also include such conditions in any other licence under which the corresponding analogue service is subsequently provided.

(3) The Commission may further vary any licence under which any Channel 3 service is provided by including such transitional provisions as they may determine exempting the holder of that licence from providing his qualifying service during such hours of the day as they may specify throughout any part of the area for which that service is provided for a period not exceeding two years beginning on the date of the variation.

### **Use of Digital Capacity**

7. The holder of the C3/C4 multiplex licence shall not, without the prior consent of the Commission, use any of the digital capacity reserved for the Channel 3 companies and Channel Four by direction of the Secretary of State to the Commission under section 28(2)(b)(ii) of the 1996 Act for the broadcasting of any digital programme services or digital additional services provided under licences which are not held by any of the Channel 3 companies, or by any body corporate controlled by a Channel 3 company, or by more than one of the Channel 3 companies taken together, or by a qualifying company controlled by Channel Four.

## **PART III**

### **THE C5/S4C MULTIPLEX LICENCE**

#### **Applications for the licence**

8.—(1) The notice published by the Commission under section 7(1) of the 1996 Act in respect of the C5/S4C multiplex licence shall, in addition to the matters set out in that section, specify the amount of digital capacity reserved in accordance with a direction of the Secretary of State to the Commission under section 28(2)(b)(ii) of the 1996 Act for the broadcasting of Channel 5 in digital form and of S4C Digital on the frequency on which the multiplex service is to be provided.

(2) A application made in pursuance of the notice referred to in paragraph (1) shall, in addition to the matters set out in section 7(4) of the 1996 Act, be accompanied by the applicant's proposals for the broadcasting of Channel 5 in digital form and of S4C Digital.

(3) Where an application for the C5/S4C multiplex licence has been duly made to the Commission in accordance with section 7 of the 1996 Act and with paragraph (2), they may, without prejudice to section 8 of the 1996 Act, refuse the application if they are not satisfied that the applicant would not charge viewers for the reception of any qualifying service.

#### **Conditions attaching to the licence**

9. The C5/S4C multiplex licence shall include, in addition to the conditions referred to in section 12(1) of the 1996 Act, such conditions as appear to be appropriate to the Commission for securing that, in consideration of the making, by the holder of the Channel 5 licence and the Welsh Authority respectively, of such payments as are from time to time agreed between each of them and the holder of the C5/S4C multiplex licence or (in default of agreement) determined by the Commission, the holder of the C5/S4C multiplex licence will use the digital capacity specified in the direction of the Secretary of State referred to in article 8(1) for the broadcasting of services provided by the holder of the Channel 5 licence and by the Welsh Authority.

#### **Variation of Channel 5 licence**

10.—(1) The Commission shall vary the licence under which Channel 5 is provided in analogue form so as to include such conditions as appear to the Commission to be appropriate for imposing on the holder of that licence, in specified circumstances, an obligation to provide his qualifying service and such other consequential and transitional provisions as the Commission may consider appropriate.

(2) The Commission shall also include such conditions in any other licence under which Channel 5 is subsequently provided in analogue form.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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30th October 1996

*Virginia Bottomley*  
Secretary of State for National Heritage

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Order disapplies, or modifies the application of, certain provisions of the Broadcasting Act 1996 (“the Act”) in relation to the multiplex licences to be granted in respect of the frequencies on which capacity is reserved for the broadcasting of Channel 3, Channel 4, Channel 5 and S4C in digital form. It is divided into three parts; Part I is concerned with matters of interpretation.

Part II relates to the multiplex licence under which Channel 3, Channel 4 and the public teletext service will be broadcast in digital form. It disapplies sections 7, 8, 9 and 10 of the Act in respect of that multiplex licence and replaces them with broadly similar provisions. Article 3, which replaces section 7 of the Act, sets out the form of notice to be published by the Independent Television Commission (“the ITC”) and the form of application for the licence. Article 4, which replaces section 8 of the Act, lays down the grounds on which the ITC may refuse an application for the licence and specifies what the ITC must publish in relation to the award of the licence. Article 5 modifies sections 11, 12, 13 and 16 of the Act. Article 6 provides for the ITC to vary the analogue licences under which Channel 3 and Channel 4 are provided so as to impose an obligation to provide those services in digital form. Article 7 specifies that the holders of any digital programme service licences or digital additional service licences to be broadcast under the licence must be controlled (directly or indirectly) by Channel 3 or Channel 4.

Part III relates to the multiplex licence under which Channel 5 and S4C will be broadcast in digital form. Article 8 provides that the notice published by the ITC under section 7(1) of the 1996 Act in respect of the licence must specify the amount of digital capacity to be reserved for the broadcasting of Channel 5 and S4C in digital form and states that the application must contain proposals for the broadcasting of those services. It also gives the ITC a discretion to refuse to award the licence to an applicant who would not provide Channel 5 and S4C free-from-air to viewers. Article 9 provides that an additional condition must be included in the licence to ensure that the digital capacity reserved for those services is used for broadcasting them, subject to the appropriate payments being agreed. Article 10 provides for the ITC to vary the analogue licence under which Channel 5 is provided so as to impose an obligation to provide that service in digital form.