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STATUTORY INSTRUMENTS

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**1996 No. 3151**

**The Advanced Television Services Regulations 1996**

**PART III**

**CONDITIONAL ACCESS**

**Application and interpretation**

**8.—**(1) This Part applies in relation to conditional access to digital television services broadcast to viewers in the Community, irrespective of the means of transmission.

(2) Schedule 1 to these Regulations shall have effect for the purposes of modifying the application of the 1984 Act in relation to systems by means of which conditional access services are provided to broadcasters.

**Requirements for descramblers**

**9.—**(1) No person shall in the United Kingdom sell or rent out, or otherwise make available, or offer or expose for sale or rent or otherwise making available any consumer equipment to which this regulation applies unless that equipment possesses the capability—

- (a) to allow the descrambling of digital television signals according to the common European scrambling algorithm as administered by a recognised European standardisation body; and
- (b) to display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

(2) This regulation applies to all consumer equipment capable of descrambling digital television signals which is sold, rented or otherwise made available or is offered for sale or rent or otherwise making available except equipment which was first on the market in the Community before 23rd August 1996.

**Transcontrol**

**10.—**(1) It shall be the duty of any person operating a conditional access system on the market to ensure that such system has the necessary technical capability for cost-effective transcontrol at cable head-ends allowing the possibility for full control by cable television operators at local or regional level of the services using such conditional access system.

(2) For the purposes of the following provisions of this regulation—

- (a) the duty referred to in paragraph (1) above is referred to as the primary duty;
- (b) the duty to co-operate, provided for in paragraph (3) below is referred to as the supplemental duty;
- (c) the person upon whom the primary duty is imposed by paragraph (1) above or would be so imposed in the circumstances referred to in paragraph (4) below is referred to as the offeror; and

(d) the person to whom the primary duty is owed as referred to in paragraph (7) below or would be so owed is referred to as the offeree.

(3) The offeror, subject to performance by the offeree of the operative condition, shall have the supplemental duty when requested so to do by the offeree to co-operate with him to ensure that the offeree is in a position to take reasonable advantage of the performance by the offeror of the primary duty.

(4) The circumstances in which the supplemental duty shall apply are that the offeror—

- (a) is for the time being subject to the primary duty; or
- (b) notwithstanding that the primary duty has not yet arisen, the offeror is in the process of designing a conditional access system or otherwise making preparations to operate such system on the market,

and the offeree has expressed an intention to transmit the digital television services of other broadcasters.

(5) Without prejudice to the generality of the supplemental duty, such duty includes the duty to disclose adequate and timely information concerning the conditional access system to the offeree as is reasonably sufficient in all the circumstances of the case to—

- (a) enable the offeree to take reasonable advantage of the performance of the primary duty; and
- (b) ensure that the offeree is not placed at a disadvantage when compared to other offerees or, where the offeror is a broadcaster, with the offeror himself.

(6) The operative condition is that the offeree has given the offeror an undertaking in writing that information supplied to the offeree pursuant to the supplemental duty shall be kept confidential and shall (together with all copies thereof) be returned to the offeror should the offeree no longer require that the primary duty be performed in relation to him.

(7) The duties referred to in paragraphs (1) and (3) above are duties owed to any person who may be affected by a contravention of them and without prejudice to any other cause of action which may arise therefrom any breach of such duty which causes that person to sustain loss or damage shall be actionable in tort or, in Scotland, delict at the suit or instance of that person.

### **Obligations of operators of conditional access services**

**11.**—(1) It shall be the duty of operators of conditional access services, irrespective of the means of transmission, who produce and market access services to digital television services—

- (a) to offer to all broadcasters, on a fair, reasonable and non-discriminatory basis, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers authorised by means of decoders administered by the service operators;
- (b) to keep separate financial accounts regarding their activity as conditional access providers.

(2) A digital television service may take advantage of the provisions in paragraph (1) above only if the services offered comply with the relevant Community obligations in force.

(3) For the purposes of the following provisions of this regulation—

- (a) the duty referred to in paragraph (1) above is referred to as the primary duty;
- (b) the duty to co-operate, provided for in paragraph (4) below is referred to as the supplemental duty;
- (c) the person upon whom the primary duty is imposed by paragraph (1) above or would be so imposed in the circumstances referred to in paragraph (5) below is referred to as the offeror; and

- (d) the person to whom the primary duty is owed as referred to in paragraph (9) below or would be so owed is referred to as the offeree.
- (4) The offeror, subject to performance by the offeree of the operative condition, shall have the supplemental duty when requested so to do by the offeree to co-operate with him to ensure that the offeree is in a position to take reasonable advantage of the performance by the offeror of the primary duty.
- (5) The circumstances in which the supplemental duty shall apply are that the offeror—
- (a) is for the time being subject to the primary duty; or
  - (b) notwithstanding that the primary duty has not yet arisen, the offeror is making preparations to provide technical services—
    - (i) to another offeree; or
    - (ii) where the offeror is himself a broadcaster, to himself, if he intends to provide such services to any other offeree,and the offeree has expressed an intention to use the technical services of the offeror.
- (6) For the purposes of paragraph (5)(b)(ii) above, whether the offeror intends at any given time to provide technical services to any other offeree may be determined in accordance with the inferences to be drawn from his conduct and all the relevant circumstances of the case.
- (7) Without prejudice to the generality of the supplemental duty, such duty includes the duty to disclose adequate and timely information concerning the conditional access system to the offeree as is reasonably sufficient in all the circumstances of the case to—
- (a) enable the offeree to take reasonable advantage of the performance of the primary duty; and
  - (b) ensure that the offeree is not placed at a disadvantage when compared to other offerees or, where the offeror is a broadcaster, with the offeror himself.
- (8) The operative condition is that the offeree has given the offeror an undertaking in writing that information supplied to the offeree pursuant to the supplemental duty shall be kept confidential and shall (together with all copies thereof) be returned to the offeror should the offeree no longer require that the primary duty be performed in relation to him.
- (9) Each of the duties referred to in paragraphs (1) and (4) above is a duty owed to any person who may be affected by a breach of it and without prejudice to any other cause of action which may arise therefrom any breach of such duty which causes that person to sustain loss or damage shall be actionable in tort or, in Scotland, delict at the suit or instance of that person.

### **Form of broadcasters' tariffs**

- 12.**—(1) Broadcasters shall publish a list of tariffs for the viewer which takes into account whether associated equipment is supplied or not.
- (2) The requirement set out in paragraph (1) above shall have effect as if it was set out in—
- (a) every local delivery service licence, being a licence which authorises the delivery of digital television services, in relation to cable television operators;
  - (b) every television programme service licence or multiplex licence granted under Part I of the 1996 Act (including in either case any licence granted to the BBC), provided that where the person who provides a television programme service and the person who operates the multiplex are different persons, the requirement shall have the effect that it shall be a sufficient compliance by one such person if that person ensures that the other such person complies with the requirement in full;

- (c) every domestic satellite service licence and non-domestic satellite service licence, in each case being a licence which authorises the provision of digital television services, in relation to satellite broadcasters;
- (d) the Agreement between the Secretary of State and the BBC dated 25th January 1996<sup>(1)</sup>.

### **Industrial property rights to conditional access products and systems**

**13.**—(1) When granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems shall have the duty to ensure that this is done on fair, reasonable and non-discriminatory terms.

(2) Without prejudice to the generality of paragraph (1) above, taking into account technical and commercial factors, holders of such rights shall have the duty not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of—

- (a) a common interface allowing connection with several other conditional access systems; or
- (b) means specific to another conditional access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

(3) Each duty referred to in paragraph (1) and (2) above is a duty owed to any person who may be affected by a breach of it, and without prejudice to any other cause of action which may arise therefrom—

- (a) any breach of such duty which causes that person to sustain loss or damage shall be actionable in tort or, in Scotland, delict at the suit or instance of that person; and
- (b) any condition included in a licence in contravention of the duty referred to in paragraph (2) above shall be void.

(4) In any proceedings in respect of the infringement of any industrial property rights to which the duties referred to in paragraphs (1) and (2) above relate, it shall be a defence for the defendant or, in Scotland, the defender—

- (a) to show that the infringement consisted only in acts or omissions which would not have constituted an infringement if the holder of such rights had complied with those duties; and
- (b) to undertake to make such payments to the holder of such rights (in respect of both past, present and future use) and to abide by such other fair, reasonable and non-discriminatory terms as the court may order.

(5) Without prejudice to the court's jurisdiction to make a declaration or declarator apart from this paragraph, a declaration or declarator that an act or omission would not, or a proposed act or omission would not, constitute an infringement of any industrial property rights if the holder of such rights had complied or were to comply with the duties referred to in paragraphs (1) and (2) above, may be made by the court in proceedings between the person doing or proposing to do the act or making or proposing to make the omission and the holder of such rights, notwithstanding that no assertion to the contrary has been made by the holder, if it is shown—

- (a) that the person has applied in writing to the holder for a written acknowledgement to the effect of the declaration or declarator claimed, and has furnished him with full particulars in writing of the act or omission in question; and
- (b) that the holder has refused or failed to give any such acknowledgement.

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(1) CMND 3152. The Agreement came into force on 6th May 1996 together with the current edition of the BBC's Charter.

## **Integrated decoders**

**14.**—(1) No person shall in the United Kingdom sell or rent out, or otherwise make available, or offer or expose for sale or rent or otherwise making available, any television set to which this regulation applies unless that television set allows for the option of fitting at least one standardised socket permitting connection of conditional access and other elements of a digital television system to the digital decoder.

(2) This regulation applies to any television set which contains an integrated decoder except any such television set which was put on the market in the Community before 23rd August 1996.

## **Dispute resolution procedures**

**15.**—(1) The Director shall from time to time establish and maintain in force appropriate dispute resolution procedures (“the Article 4(e) dispute resolution procedures”) to which any party having an unresolved dispute concerning the application of any provision of this Part shall have easy, and in principle inexpensive, access, with the objective of resolving such disputes in a fair, timely and transparent manner.

(2) The Article 4(e) dispute resolution procedures—

- (a) shall not preclude an action at law from either side; and
- (b) are without prejudice to any action that the Commission or any member State may take pursuant to the Community Treaties.

(3) The Article 4(e) dispute resolution procedures shall provide for the appointment by the Director of an independent person—

- (a) nominated by the parties to the dispute; or
- (b) in default of agreement between the parties, and subject to (8) below, either the Director or another person nominated by him according to the procedures established by him,

to act as a conciliator to assist the parties to resolve their dispute in accordance with those procedures.

(4) Where the parties so agree—

- (a) in their application for the appointment of a conciliator; or
- (b) following notification of the findings of the conciliator,

such findings shall be binding on the parties and shall, subject to paragraph (6), have effect as a contract between the parties.

(5) The reasonable costs or expenses incurred by the conciliator in performing his functions under this regulation shall be set out in his findings and shall be met by the parties in equal shares:

Provided that, where it appears to the conciliator that, having regard to the conduct and means of the parties and any other relevant circumstances, it would be appropriate to share the costs or expenses in some other manner, he shall set out in his findings as to the apportionment of the costs and the reasons therefor.

(6) The findings of the conciliator, in so far as they relate to his costs or expenses, shall be enforceable as against any party in respect of his share determined in accordance with paragraph (5) above—

- (a) in England and Wales and in Northern Ireland as if it were a judgement of a county court; and
- (b) in Scotland as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

(7) On the expiry of two months (or such longer period as the parties to the dispute and the conciliator may agree) commencing on the date of the appointment of the conciliator, the dispute

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resolution procedure shall be taken to be completed, notwithstanding that the parties have not reached agreement and the conciliator has not included in his findings anything material to the resolution of the dispute.

(8) In paragraph (3) above, ‘independent person’ means a person independent of the parties to the dispute.