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STATUTORY INSTRUMENTS

1996 No. 3197

TELECOMMUNICATIONS

The Advanced Television Services (Amendment) Regulations 1996

<i>Made</i>	- - - -	<i>19th December 1996</i>
<i>Laid before Parliament</i>		<i>19th December 1996</i>
<i>Coming into Force</i>	- -	<i>7th January 1997</i>

The Secretary of State, being a Minister designate⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to advanced television services including digital conditional access and subscription management services, in exercise of the powers conferred on him by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Advanced Television Services (Amendment) Regulations 1996 and shall come into force on 7th January 1997.

Interpretation

2. In these Regulations—

“the principal Regulations” means the Advanced Television Services Regulations 1996⁽³⁾.

(2) Words and expressions in these Regulations shall have the same meaning as in the principal Regulations.

Amendment to Schedule 1

3. For Schedule 1 to the principal Regulations there shall be substituted the following:

(1) [SI 1996/266](#).
(2) [1972 c. 68](#).
(3) [SI 1996/3151](#).

“SCHEDULE 1

Regulation 8(2)

MODIFICATION OF THE APPLICATION OF THE TELECOMMUNICATIONS
ACT 1984 AND OF CERTAIN LICENCES GRANTED THEREUNDER

Certain systems to be treated as telecommunication systems

1. For the purposes of sections 3 to 7, 12 to 19 and Part III of the 1984 Act:—
 - (a) a conditional access system used for the purposes of providing subscriber management services shall to the extent which it is so used be treated as a telecommunication system even though it would not be so treated apart from this paragraph (in this paragraph referred to as a “deemed system”); and
 - (b) subscriber management services provided by means of a deemed system shall be treated as telecommunication services.

Disapplication of section 6

- 2.—(1) Subject to sub-paragraph (2) below, subsection 2(b) of section 6 of the 1984 Act (exemption from the requirement for a telecommunication licence for systems situated on a single set of premises) shall not apply to the running by a person of any conditional access system.
 - (2) Nothing in sub-paragraph (1) above shall affect the exemption in the said subsection (2) (b) as it relates to any conditional access system which is run:
 - (a) by a broadcaster and is used to provide conditional access services for himself only; or
 - (b) by any other person only to enable him to receive digital television services.

Disapplication of existing licences

- 3.—(1) Every licence granted under section 7 of the 1984 Act before the coming into force of these Regulations (whether granted to all persons, to persons of a class or to a particular person) which authorises (however expressed) the running of a telecommunication system and the provision by means thereof of conditional access services to digital television services to any other person by the person to whom the licence is granted or any person being a member of the class of persons to whom the licence is granted shall, upon the coming into force of these Regulations, cease to authorise the running of such system in so far as it is used for the purposes of the provision by the Licensee of such services.
 - (2) Where such a licence ceases by virtue of sub-paragraph (1) above to authorise the running by a licensee of a telecommunication system in so far as it is used for the provision of conditional access services to another person, that licence and any other licence granted under section 7 of the 1984 Act before the coming into force of these Regulations which authorises (however expressed) the running of that system in so far as it is used for the provision of such services to that licensee himself shall also cease to authorise the running of that telecommunication system in so far as it is so used.”

Substitution of Schedule 2

4. For Schedule 2 to the principal Regulations there shall be substituted the following:—

“SCHEDULE 2

Regulation 16

ENFORCEMENT OF REGULATIONS 6, 9 AND 14

Enforcement of the relevant provisions

1.—(1) This Schedule shall have effect for the purposes of providing for the enforcement of regulations 6(1), 9(1) and 14(1), and in this Schedule, each such provision is hereinafter referred to as a “relevant provision”.

(2) Nothing in paragraphs 4 or 5 below shall be taken to authorise the taking of any action in relation to any equipment which has been sold or rented out or otherwise made available as the case may be to a viewer, where the viewer has physically taken delivery of the equipment, provided that—

- (a) nothing in this paragraph shall prevent an enforcement authority or an officer of such authority from taking any other action authorised by this Schedule in relation to such equipment; and
- (b) nothing in this Schedule shall prevent the viewer from taking any action or bringing any proceedings which he might otherwise take or bring in respect of such equipment.

Enforcement authorities

2.—(1) It shall be the duty of the following authorities to enforce the relevant provisions—

- (a) in Great Britain, weights and measures authorities; and
- (b) in Northern Ireland, the Department of Economic Development.

(2) The Secretary of State may enforce the relevant provisions.

(3) In this Schedule, “enforcement authority” includes any person who is, pursuant to the provisions of this paragraph, authorised to enforce the relevant provisions.

Test purchases

3.—(1) An enforcement authority shall have the power, for the purpose of ascertaining whether any equipment which is required to comply with a relevant provision does in fact so comply, to make, or authorise an officer of the authority to make, any purchase of equipment.

(2) Where—

- (a) any equipment purchased pursuant to this paragraph by or on behalf of an enforcement authority is submitted to a test;
- (b) the test leads to the bringing of forfeiture proceedings in respect of that equipment or equipment of the same description pursuant to paragraph 7 or 8 below; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the equipment was purchased or any person who is a party to the proceedings or has an interest in the equipment to have the apparatus tested.

(3) In this paragraph, “purchase” includes, where equipment is only available to rent, renting, and where consumer equipment capable of descrambling digital television signals is only made available by a method otherwise than by way of sale or rent, obtaining such equipment by that method, and cognate expressions shall be construed accordingly.

Powers of search etc.

4.—(1) Subject to paragraph 5 below, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this paragraph.

(2) The officer may, for the purpose of ascertaining whether there has been a breach of a relevant provision—

- (a) inspect any equipment and any document, record, information or any other thing relating thereto and enter any premises other than premises occupied only as a person's residence; or
- (b) examine any procedure connected with the production of any equipment.

(3) If the officer has reasonable grounds for suspecting that there has been a breach of a relevant provision, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such breach, or for the purpose of bringing proceedings for forfeiture under paragraph 7 or 8 below, seize and detain any equipment.

(4) The officer may seize and detain any document, record or information or any other thing which he has reasonable grounds for believing may be required—

- (a) as evidence in proceedings for forfeiture under paragraph 7 or 8 below; or
- (b) by the authorities of a member State other than the United Kingdom for the purposes of the exercise of their functions with regard to the Directive.

(5) The officer may, for the purpose of the exercise of his powers under sub-paragraphs (3) or (4) above to seize any equipment, any document, record or information or any other thing—

- (a) require any person having authority to do so to open any container; and
- (b) himself open or break open any such container where a requirement made under sub-paragraph (a) above in relation to the container has not been complied with.

Provisions supplemental to paragraph 4

5.—(1) An officer seizing any equipment, document, record or information or any other thing under paragraph 4 above shall inform the person from whom they are seized that such equipment, document, record or information or other thing has been so seized.

(2) If a justice of the peace—

(a) is satisfied by any written information on oath that there are reasonable grounds for believing either—

- (i) that any equipment, document, record or information or any other thing which any officer has power to inspect under paragraph 4 above is on any premises (which may be premises occupied only as a person's residence) and that such inspection is likely to disclose evidence that there has been a breach of a relevant provision; or
- (ii) that such a breach has taken place, is taking place or is about to take place on any premises; and

(b) is also satisfied by any such information either—

- (i) that admission to the premises has been or is likely to be refused and that notice of an intention to apply for a warrant under this sub-paragraph has been given to the occupier; or
- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.

the justice may by warrant under his hand, which shall continue in force for one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of paragraph 4 above or a warrant under sub-paragraph (2) of this paragraph may take with him such other persons and such equipment as may appear to him to be necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under sub-paragraph (2) of this paragraph, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) Where any equipment seized by an officer under paragraph 4 above is submitted to a test, the officer shall inform the person mentioned in sub-paragraph (1) of this paragraph of the result of the test and, if—

- (a) proceedings are brought in respect of a breach of a relevant provision for the forfeiture of the equipment concerned; and
- (b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person from whom the equipment was seized or any person who is a party to the proceedings or has an interest in the equipment to have the equipment tested.

(6) In the application of this paragraph to Scotland, the reference in sub-paragraph (2) above to a justice of the peace shall include a reference to a sheriff and the references to any written information on oath shall be construed as references to any evidence on oath.

(7) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (2) above to any written information on oath shall be construed as references to any complaint on oath.

Appeals against detention of equipment

6.—(1) Any person having an interest in any equipment, document, record, information or other thing which is for the time being detained under any provision of this Schedule by an enforcement authority or by an officer of such an authority may apply for an order requiring such item to be released to him or to another person.

(2) An application under this paragraph may be made—

- (a) to any magistrates' court in which proceedings for forfeiture have been brought in England and Wales and Northern Ireland;
- (b) where no such proceedings have been brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under this paragraph to a magistrates' court or to the sheriff, an order requiring equipment to be released shall be made only if the court or sheriff is satisfied—

- (a) that proceedings for the forfeiture of the equipment under paragraph 7 or 8 below have not been brought, or, having been brought, have been concluded without the equipment being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the equipment was seized.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;

(b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980⁽⁴⁾ or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁵⁾ (statement of case).

Proceedings in England and Wales or Northern Ireland for forfeiture

7.—(1) Where in England and Wales or Northern Ireland any equipment has been seized and detained by an officer of an enforcement authority pursuant to paragraph 4 above, an officer of that authority may apply to a justice of the peace acting for the petty sessions area in which the equipment was seized (referred to below in this paragraph as the “relevant petty sessions area”) to initiate proceedings for forfeiture of the equipment under this paragraph.

(2) An application under this paragraph must be made within the period of six months beginning with the date on which the equipment to which it relates was seized.

(3) A justice of the peace to whom an application under this paragraph is made may issue a summons to any person appearing to him to be the owner of or otherwise interested in any equipment to which the application relates requiring him to appear on a day specified in the summons before a magistrates' court acting for the relevant petty session area to show cause why the equipment should not be forfeited.

(4) In addition to the person summoned, any other person claiming to be the owner of or otherwise interested in any equipment to which an application under this paragraph relates shall be entitled to appear before the court on the day specified in the summons to show cause why it should not be forfeited.

(5) Subject to the following provisions of this paragraph, where any equipment is brought before a magistrates' court in proceedings under this paragraph and the court is satisfied that the equipment breaches the relevant provision, the court shall order the equipment to be forfeited to the enforcement authority concerned, unless the person summoned or any other person entitled to appear before the court for that purpose shows cause why the equipment should not be forfeited.

(6) If the person summoned does not appear, the court shall not make an order under this paragraph unless service of the summons is proved.

(7) Where in any proceedings under this paragraph an order is made for the forfeiture of any equipment, any person who appeared, or who was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.

(8) No order for the forfeiture of any equipment made under this paragraph shall take effect—

- (a) until the end of the period of twenty-one days after the day on which the order is made; or
- (b) if appeal proceedings are brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the conclusion of those proceedings.

(9) If a magistrates' court does not order forfeiture of any equipment brought before it in proceedings under this paragraph the court may if it thinks fit order the person on whose application the proceedings were initiated to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why the equipment should not be forfeited; and costs ordered to be paid under this sub-paragraph shall be enforceable as a civil debt.

(4) 1980 c. 43.

(5) SI 1981/1675 (N.1.26).

(10) Any equipment ordered to be forfeited under this paragraph may be disposed of by the enforcement authority concerned in such manner as it thinks fit.

(11) This paragraph has effect notwithstanding anything in section 140 of the Magistrates' Courts Act 1980 or article 58 of the Magistrates' Courts (Northern Ireland) Order 1981 (disposal of non-pecuniary forfeitures).

(12) In the application of this paragraph to Northern Ireland references to a petty sessions area shall be read as references to a petty sessions district.

(13) This paragraph applies to England and Wales and Northern Ireland only.

Proceedings in Scotland for forfeiture

8.—(1) Where in Scotland any equipment has been seized and detained by an officer of an enforcement authority pursuant to paragraph 4 above, the enforcement authority may apply to the sheriff for forfeiture of the equipment under this paragraph.

(2) An application to the sheriff under sub-paragraph (1) shall be made by summary application and must be made within the period of six months beginning with the date on which the equipment to which it relates was seized.

(3) Where an application is made under this paragraph and the sheriff is satisfied that the equipment breaches the relevant provision, the sheriff shall order the equipment to be forfeited to the enforcement authority concerned, unless cause is shown why the equipment should not be forfeited.

(4) Any equipment ordered to be forfeited under this paragraph may be disposed of by the enforcement authority concerned in such manner as it thinks fit.

(5) This paragraph applies to Scotland only.

Power of the court to require a matter to be remedied

9.—(1) Where an application is made for the forfeiture of any equipment in respect of any matter which it appears to the court or the sheriff as the case may be to be a matter which it is in the power of any person, who appears or who is entitled to appear to show cause why such equipment should not be forfeited, to remedy, the court or sheriff may, instead of ordering the equipment to be forfeited, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matter.

(2) The time fixed by an order under sub-paragraph (1) above may be extended or further extended by order of the court or sheriff on an application made before the end of that time as originally fixed or as extended under this sub-paragraph, as the case may be.

Recovery of expenses of enforcement

10.—(1) This paragraph applies where a court or sheriff as the case may be makes an order under paragraph 7, 8 or 9 above.

(2) The court or sheriff may (in addition to any other order it may make as to costs or expenses) order the person appearing to be the owner of or otherwise interested in the equipment or from whom the equipment was seized, to reimburse the enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in investigating the breach, and, without prejudice to the generality of the foregoing, in having the equipment tested; or
- (b) in connection with any seizure or detention of the equipment by or on behalf of the authority.

Application of England and Wales of certain provisions of the Police and Criminal Evidence Act 1984

11.—(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, sections 15, 16, 20 and 21 of the Police and Criminal Evidence Act 1984⁽⁶⁾ shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to England and Wales only.

Application in Northern Ireland of certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989

12.—(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, articles 17, 18, 22 and 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989⁽⁷⁾ shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to Northern Ireland only.

Interpretation

13.—(1) In this Schedule—

“equipment” means—

- (a) in relation to regulation 6, a television set;
- (b) in relation to regulation 9, consumer equipment capable of descrambling digital television signals; and
- (c) in relation to regulation 14, a television set containing an integrated digital decoder;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation; and
- (c) any tent or movable structure,

and in this definition, “offshore installation” has the meaning given to it by regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995⁽⁸⁾.

(2) In this Schedule “document, record or information” includes any computer disk or other electronic, magnetic or electromagnetic means upon which the document, record or information is or is reasonably believed to be stored.”

19th December 1996

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⁽⁶⁾ 1984 c. 60.
⁽⁷⁾ SI 1989/34 (N.I. 12).
⁽⁸⁾ SI 1995/738.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advanced Television Services Regulations 1996 by substituting a new Schedule 1 and a new Schedule 2. The new Schedule 1 has the same effect as that in the principal Regulations but the provisions of paragraph 3 by which existing Telecommunications Act Licences cease to authorise the running of telecommunication systems by means of which conditional access services other than those purely self-provided are provided are clarified. The new Schedule 2 repeats the forfeiture procedures in respect of regulations 6, 9 and 14 of the principal Regulations and enables their operation in Scotland as well as in England and Wales and Northern Ireland.