
STATUTORY INSTRUMENTS

2008 No. 1420

**The Television Multiplex Services
(Reservation of Digital Capacity) Order 2008**

Services to be provided on reserved capacity

Licensing of services other than qualifying services for broadcasting on Multiplex B

5. In this Order, “public service digital television programme service” means a digital television programme service provided by a relevant public service broadcaster under a digital programme licence which—

- (a) has been granted by OFCOM (whether under article 3(9) or subsequently) under section 18 of the 1996 Act(1) (licensing of digital television programme services), as modified by article 6; and
- (b) accords with section 19 of that Act(2) (duration and conditions of digital programme licences), as modified by article 7;

and in this Order such a licence is referred to as a “public service digital programme licence”.

Public service digital programme licences: award

6.—(1) The following modifications to section 18 of the 1996 Act (licensing of digital television programme services) shall have effect for the purposes of applications for, and the award and grant of, public service digital programme licences.

(2) Subsections (1) to (3) of that section (applications) shall not apply in relation to a public service digital programme licence granted under article 3(9), but in any other case shall have effect in relation to an application by a relevant public service broadcaster for a public service digital programme licence as they have effect in relation to an application for any other digital programme licence.

(3) Except as otherwise provided in this Order, a public service digital programme licence shall be treated as if it were a digital programme licence granted under subsection (4) of that section.

(4) Nothing in this Order shall require OFCOM to grant a licence to an applicant if they are prevented from doing so by—

- (a) section 3(3)(a) of the 1996 Act (which provides that OFCOM must not grant a licence to a person unless satisfied that they are a fit and proper person to hold it), or

(1) Section 18 of the 1996 Act was amended by paragraph 90(1) and (2) in Part 2 of Schedule 15 to the Communications Act 2003 and repealed in part by paragraph 90(1) and (3) of that Part of that Schedule and by Schedule 19 to that Act. Section 18 was extended (with modifications) to Guernsey, by article 2(a) of and paragraph 15 of Schedule 1 to [SI 2003/3192](#); to the Isle of Man, by article 2(a) of and paragraph 7 of Schedule 1 to [SI 2003/3193](#); and to Jersey, by article 2(a) of and paragraph 14 of Schedule 1 to [SI 2003/3203](#).

(2) Section 19 of the 1996 Act was amended by paragraph 91(1) and (2) in Part 2 of Schedule 15 to the Communications Act 2003 and repealed in part by paragraph 91(1) and (3) of that Part of that Schedule and by Schedule 19 to that Act. Section 19 was extended (with modifications) to Guernsey, by article 2(a) of and paragraph 1 of Schedule 1 to [SI 2003/3192](#); to the Isle of Man by article 2(a) of and paragraph 1 of Schedule 1 to [SI 2003/3193](#); and to Jersey, by article 2(a) and paragraph 1 of Schedule 1 to [SI 2003/3203](#).

(b) section 5(1)(a) of that Act (which provides that OFCOM must do all they can to secure that a person does not become or remain the holder of a licence under Part 1 of that Act if they are a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the Broadcasting Act 1990).

(5) For the purposes of paragraph (4), the reference in section 18(4) (grant of licence) to section 5(1)(a) of the 1996 Act shall not be taken to prevent OFCOM from granting a public service digital programme licence to the Welsh Authority.

Public service digital programme licences: conditions and duration

7.—(1) The following modifications to section 19 of the 1996 Act (duration and conditions of digital programme licences) shall have effect for the purposes of this Order in relation to public service digital programme licences.

(2) Subsection (1) of that section shall have effect as if, after the words “shall continue in force until it is surrendered by its holder” there were added the words—

“or, if sooner, in the case of a public service digital programme licence, until—

- (a) the expiry or other termination of the Multiplex B licence, or
- (b) in a case where the holder of the public service digital programme licence also holds a Channel 3 licence or a licence to provide Channel 5, the holder ceases, by virtue of article 4(3)(a) or (4) of the 2008 Order, to have digital capacity on Multiplex B reserved for it.”

(3) That section shall have effect as if, after subsection (3), there were inserted—

“(3A) A public service digital programme licence shall include such conditions as appear to OFCOM to be appropriate for securing that the holder of the licence provides the public service digital television programme services and digital additional services (if any) proposed by the holder of the licence in its application made under article 3 of the 2008 Order, for the duration of the licence, subject to subsection (3C).

(3B) A public service digital programme licence whose holder is also the holder of a regional Channel 3 licence (within the meaning of Part 1 of the Broadcasting Act 1990) may also include such conditions as appear to OFCOM to be appropriate for securing that the services referred to in subsection (3A) are provided in such area or areas in the British Islands as may be specified in the conditions.

(3C) Where the holder of a public service digital programme licence applies for the variation of any condition included in that licence by virtue of subsection (3A), OFCOM must grant the application unless it appears to them that, if the application were granted, the capacity of the public service digital television programme services provided under it (or any digital additional services associated with it) to further the objectives mentioned in article 3(8) of the 2008 Order would be unduly diminished.

(3D) In this section, “the 2008 Order” means the Television Multiplex Services (Reservation of Digital Capacity) Order 2008; and expressions used in this section and in that Order have the same meaning in this section as they have in that Order.”