



Broadcasting Act 1996

1996 CHAPTER 55

PART I

DIGITAL TERRESTRIAL TELEVISION BROADCASTING

Introductory

1 Multiplex services and digital programme services

- (1) In this Part “multiplex service” means a service provided by any person which consists in the broadcasting for general reception of two or more services specified in subsection (3) by combining the relevant information in digital form, together with any broadcasting in digital form of digital additional services (as defined by section 24(1)).
- (2) A service in respect of which a licence under section 7 is in force is not prevented from being a multiplex service at a particular time merely because only one service specified in subsection (3) is being broadcast in digital form at that time.
- (3) The services referred to in subsections (1) and (2) are—
 - (a) a digital programme service (as defined by subsection (4)), or
 - (b) a qualifying service (as defined by section 2(2)).
- (4) In this Part “digital programme service” means a service consisting in the provision by any person of television programmes (together with any ancillary services, as defined by section 24(2)) with a view to their being broadcast in digital form for general reception, whether by him or by some other person, but does not include—
 - (a) a qualifying service,
 - (b) a teletext service, or
 - (c) any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures, except, in the case of a service falling within paragraph (b) or (c), to the extent that it is an ancillary service.

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- (5) The Secretary of State may, if having regard to developments in broadcasting technology he considers it appropriate to do so, by order amend the definition of “digital programme service” in subsection (4).
- (6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section—
 - “broadcast” means broadcast otherwise than—
 - (a) by satellite, or
 - (b) in the provision of a local delivery service (as defined by section 72(1) of the 1990 Act), and
 - “for general reception” means for general reception in, or in any area in, the United Kingdom.

2 **Meaning of “independent analogue broadcaster” and “qualifying service”**

- (1) In this Part “independent analogue broadcaster” means—
 - (a) the Channel Four Television Corporation,
 - (b) the Welsh Authority,
 - (c) any person who holds a Channel 3 licence or a Channel 5 licence, or
 - (d) the public teletext provider.
- (2) Subject to subsections (4) and (5), in this Part “qualifying service” means any service which—
 - (a) is provided by an independent analogue broadcaster falling within paragraph (a) or (c) of subsection (1) who has notified the Commission, within the period of one month beginning with the commencement of this section, of his intention to provide a service specified in subsection (3) (“the corresponding analogue service”) for broadcasting in digital form, and
 - (b) as respects the programmes included in the service and the times at which they are broadcast, is identical with the corresponding analogue service.
- (3) The services referred to in subsection (2) are—
 - (a) Channel 4, and
 - (b) any Channel 3 service or Channel 5.
- (4) If the Welsh Authority notify the Commission, within the period of one month beginning with the commencement of this section, of their intention to provide S4C Digital, S4C Digital shall be a qualifying service for the purposes of this Part.
- (5) If—
 - (a) the public teletext provider notifies the Commission, within the period of one month beginning with the commencement of this section, of his intention to provide a teletext service for broadcasting in digital form, and
 - (b) the Commission consent under section 30 to his provision of that service,
 that service (in this Part referred to as “the qualifying teletext service”) shall be a qualifying service for the purposes of this Part.
- (6) In this Part “public teletext provider” means the person who holds the additional services licence (within the meaning of Part I of the 1990 Act) which relates to the teletext service referred to in section 49(2) of that Act.

- (7) In subsection (2) “programme” does not include an advertisement.

General provisions about licences

3 Licences under Part I

- (1) Any licence granted by the Independent Television Commission (in this Part referred to as “the Commission”) under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of this Part.
- (2) A licence may be so granted for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified.
- (3) The Commission—
- (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it, and
 - (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;
- and nothing in this Part shall be construed as affecting the operation of this subsection or of section 5(1) or (2)(b) or (c).
- (4) The Commission may vary a licence by a notice served on the licence holder if—
- (a) in the case of a variation of the period for which a licence having effect for a specified period is to continue in force, the licence holder consents, or
 - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Commission about the variation.
- (5) Paragraph (a) of subsection (4) does not affect the operation of section 17(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 13(1).
- (6) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Commission.
- (7) Without prejudice to the generality of subsection (6), the Commission shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.
- (8) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the Wireless Telegraphy Act 1949 or section 7 of the Telecommunications Act 1984 in connection with the provision of that service.

4 General licence conditions

- (1) A licence may include—
- (a) such conditions as appear to the Commission to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under the 1990 Act or this Act;

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- (b) conditions requiring the payment by the licence holder to the Commission (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
 - (c) conditions requiring the licence holder to provide the Commission, in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under the 1990 Act or this Act;
 - (d) conditions providing for such incidental and supplemental matters as appear to the Commission to be appropriate.
- (2) A licence may in particular include conditions requiring the licence holder—
- (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified, or
 - (b) (except to the extent that the Commission consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified.
- (3) The fees required to be paid to the Commission by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by the Commission; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to the 1990 Act.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Commission shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide the Commission with any information, and
 - (b) in purported compliance with that condition provides them with information which is false in a material particular,
- he shall be taken for the purposes of sections 17, 23 and 27 of this Act and section 42 of the 1990 Act to have failed to comply with that condition.
- (6) Nothing in this Part which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

5 Restrictions on holding of licences under Part I

- (1) The Commission shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to the 1990 Act (as amended by this Act); and
 - (b) that any requirements imposed by or under Parts III to V of that Schedule (as so amended) are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Commission may accordingly—

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- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
 - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
 - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
 - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
 - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
 - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
 - (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
 - (i) shareholdings in the body, or
 - (ii) the directors of the body,where such proposals are known to the body;
 - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- (3) Where the Commission—
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
 - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,
- any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
- (4) Those provisions shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as the Commission consider necessary or expedient to ensure that where—
- (a) the holder of the licence is a body, and
 - (b) a relevant change takes place after the grant of the licence,
- the Commission may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.
- (6) The Commission shall not serve any such notice on the licence holder unless—
- (a) they have notified him of the matters complained of and given him a reasonable opportunity of making representations to them about those matters, and
 - (b) in a case where the relevant change is one falling within subsection (7)—
 - (i) they have also given him an opportunity of complying with Parts III and IV of Schedule 2 to the 1990 Act within a period specified in the notification, and

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- (ii) the period specified in the notification has elapsed.
- (7) A relevant change falls within this subsection if it consists only in one or more of the following—
- (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2 to the 1990 Act,
 - (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule), or
 - (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (8) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—
- (a) any change affecting the nature or characteristics of the body,
 - (b) any change in the persons having control over or interests in the body, or
 - (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2 to the 1990 Act,
- being (in any case) a change which is such that, if it fell to the Commission to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

Multiplex services

6 Assignment of frequencies by Secretary of State

- (1) The Secretary of State may by notice assign to the Commission, for the purpose of the provision of multiplex services falling to be licensed by them under this Part, such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more of those services.
- (2) Any frequency assigned by the Secretary of State under subsection (1) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (3) The Secretary of State may by notice revoke the assignment under subsection (1) of any frequency specified in the notice, whether or not the frequency is for the time being one on which there is being provided a multiplex service licensed under this Part.

7 Multiplex licences

- (1) Where the Commission propose to grant a licence to provide a multiplex service (in this Part referred to as a “multiplex licence”) they shall publish, in such manner as they consider appropriate, a notice—
 - (a) stating that they propose to grant such a licence,
 - (b) specifying the frequency or frequencies on which the service is to be provided,

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- (c) specifying, in such manner as the Commission consider appropriate, the area or areas in the United Kingdom within which the frequency or frequencies is or are to be available,
 - (d) inviting applications for the licence and specifying the closing date for such applications,
 - (e) specifying the fee payable on any application, and
 - (f) stating whether any percentage of multiplex revenue for each accounting period would be payable by an applicant in pursuance of section 13 if he were granted the licence and, if so, specifying that percentage.
- (2) Unless an order under section 13(2) is in force—
- (a) the consent of the Secretary of State shall be required for so much of the notice as relates to the matters specified in subsection (1)(f), and
 - (b) the Commission may if they think fit (with that consent) specify under subsection (1)(f)—
 - (i) different percentages in relation to different accounting periods falling within the period for which the licence would be in force, and
 - (ii) a nil percentage in relation to any accounting period so falling.
- (3) When publishing a notice under subsection (1), the Commission—
- (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii) and (f), and
 - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) An application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(e),
 - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
 - (i) the parts of the area specified under subsection (1)(c) which would be within the 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,
 - (c) 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,
 - (d) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of those services would begin,
 - (e) the applicant's proposals as to the broadcasting of digital additional services,
 - (f) 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,
 - (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.

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- (5) In subsection (4)(f) “acquisition” includes acquisition on hire or loan.
- (6) At any time after receiving such an application and before determining it, the Commission may require the applicant to furnish additional information under any of paragraphs (b) to (h) of subsection (4).
- (7) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (8) The Commission shall, as soon as reasonably practicable after the date specified in a notice under subsection (1) as the closing date for applications, publish in such manner as they consider appropriate—
 - (a) the following matters, namely—
 - (i) the name of every person who has made an application to them in pursuance of the notice,
 - (ii) the proposals submitted by him under subsection (4)(c), and
 - (iii) such other information connected with his application as the Commission consider appropriate; and
 - (b) a notice—
 - (i) inviting representations to be made to them with respect to any of the applications, and
 - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

8 Award of multiplex licences

- (1) Where the Commission have published a notice under section 7(1), they shall in determining whether, or to whom, to award the multiplex licence in question, have regard to the extent to which, taking into account the matters specified in subsection (2) and any representations made to them in pursuance of section 7(8)(b) with respect to those matters, the award of the licence to each applicant would be calculated to promote the development of digital television broadcasting in the United Kingdom otherwise than by satellite.
- (2) The matters referred to in subsection (1) are—
 - (a) the extent of the coverage area proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 7(4)(b),
 - (b) the timetables proposed by the applicant under section 7(4)(b)(ii) and (d),
 - (c) the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
 - (d) the capacity of the digital programme services proposed to be included in the service to appeal to a variety of tastes and interests,
 - (e) any proposals by the applicant 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, and
 - (f) whether, in contracting or offering to contract with persons providing digital programme services or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.
- (3) In subsection (2)(e) “acquisition” includes acquisition on hire or loan.

- (4) Where the Commission have awarded a multiplex licence to any person in accordance with this section, 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.

9 Power to require two or more multiplex licences to be granted to one person

- (1) The Commission may, before publishing a notice under section 7(1), determine that two or more multiplex licences are on that occasion to be granted to one person.
- (2) Where the Commission have so determined, they shall publish a single notice under section 7(1) in relation to the licences.
- (3) In relation to any application made in pursuance of such a notice—
- (a) references in section 7(4) to the proposed service shall have effect as references to each of the proposed services,
 - (b) the reference in section 8(1) to the multiplex licence shall have effect as a reference to all the licences concerned,
 - (c) in section 8(2), the reference in paragraph (d) to the proposed service shall have effect as a reference to all the proposed services considered together, and other references to the proposed service shall have effect as references either to each of the proposed services or to all of them considered together, as the Commission consider appropriate.
- (4) Nothing in this section applies in relation to the renewal of a multiplex licence.

10 Award of multiplex licence subject to conditions

- (1) The Commission may, when awarding a multiplex licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
- (a) any duties which are or may be imposed on them, or on the licence holder, by or under the 1990 Act or this Act, and
 - (b) any information provided to them under section 7(4)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where the Commission determine that any condition imposed by them in relation to a multiplex licence in pursuance of subsection (1) has not been satisfied, section 8 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 8 shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.

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11 Failure to begin providing licensed service and financial penalties on revocation of licence

- (1) Subject to subsection (2), subsection (3) applies where at any time after a multiplex licence has been granted to any person but before the licence has come into force—
 - (a) that person indicates to the Commission that he does not intend to provide the service in question, or
 - (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force.
- (2) Subsection (3) shall not apply in the case of any person by virtue of paragraph (b) of subsection (1) unless the Commission have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where this subsection applies—
 - (a) the Commission shall serve on the person to whom the licence has been granted a notice revoking the licence as from the time the notice is served on him, and
 - (b) section 8 shall (subject to subsection (4)) have effect as if he had not made an application for the licence.
- (4) Section 8 shall not have effect as mentioned in subsection (3) if the Commission decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.
- (5) Where the Commission revoke a multiplex licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a specified financial penalty not exceeding whichever is the greater of—
 - (a) £50,000, or
 - (b) the prescribed amount.
- (6) In subsection (5) “the prescribed amount” means—
 - (a) where—
 - (i) the licence is revoked under this section, or
 - (ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended, 7 per cent. of the amount which the Commission estimate would have been the multiplex revenue for that accounting period (as determined in accordance with section 14), and
 - (b) in any other case, 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (7) Any financial penalty payable by any body by virtue of subsection (5) shall, in addition to being recoverable from that body as provided by section 38(4), be recoverable by the Commission as a debt due to them from any person who controls that body.

12 Conditions attached to multiplex licence

- (1) A multiplex licence shall include such conditions as appear to the Commission to be appropriate for securing—
 - (a) that the licensed service is established by the licence holder in accordance with the timetable and other proposals indicated in the technical plan submitted under section 7(4)(b),
 - (b) the implementation of any proposals submitted by the licence holder under section 7(4)(c), (d), (e) or (f),
 - (c) that all digital programme services broadcast under the licence are provided by the holder of a licence under section 18,
 - (d) that all digital additional services broadcast under the licence are provided by the holder of a licence under section 25,
 - (e) that in the terms on which the licence holder contracts, or offers to contract, for the broadcasting of digital programme services or digital additional services, he does not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons,
 - (f) that the licence holder does not, in any agreement with a person providing a digital programme service or digital additional services which entitles that person to use a specified amount of digital capacity on the frequency or frequencies to which the licence relates, restrict that person's freedom to make arrangements with some other person as to the use of any of that digital capacity (except to the extent that the restriction is reasonably required for the purpose of ensuring the technical quality of the broadcasts or for the purpose of securing compliance with any other condition of the licence),
 - (g) that the signals carrying the multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area for which the service is provided as is for the time being reasonably practicable, and
 - (h) that, while the licence is in force, at least 90 per cent. of digital capacity on the frequency or frequencies to which the licence relates is available for the broadcasting of digital programme services, qualifying services, programme-related services or relevant technical services.
- (2) Any conditions imposed in pursuance of subsection (1)(a) or (b) may be varied by the Commission with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).
- (3) Where the licence holder applies to the Commission for the variation of any condition imposed in pursuance of subsection (1)(b) and relating to the characteristics of any of the digital programme services to be broadcast under the licence, the Commission shall vary the condition accordingly unless it appears to them that, if the application were granted, the capacity of the digital programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.
- (4) In subsection (1)(h)—
 - (a) “qualifying service” does not include the qualifying teletext service,
 - (b) “programme-related service” means any digital additional service consisting in the provision of services (apart from advertising) which—
 - (i) are ancillary to the programmes included in one or more television programme services (within the meaning of Part I of the 1990 Act) and are directly related to the contents of those programmes, or
 - (ii) relate to the promotion or listing of such programmes, and

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- (c) “relevant technical service” means any technical service which relates to one or more digital programme services.
- (5) The Secretary of State may by order amend subsection (1)(h) by substituting for the percentage for the time being specified there a different percentage specified in the order.
- (6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (7) Section 10 of the 1990 Act (Government control over licensed services) shall apply in relation to a multiplex service licensed under this Part as it applies in relation to a service licensed under Part I of that Act.

13 Additional payments to be made in respect of multiplex licences

- (1) Where a multiplex licence is granted in pursuance of a notice under subsection (1) of section 7 which specified a percentage of multiplex revenue under paragraph (f) of that subsection, the licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b)) in respect of each accounting period of his falling within the period for which the licence is in force, an amount representing such percentage of the multiplex revenue for that accounting period (determined under section 14) as was specified in the notice.
- (2) The Secretary of State may by order provide that, in relation to any notice under subsection (1) of section 7 published while the order is in force, no percentage shall be specified under paragraph (f) of that subsection.
- (3) Any order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A multiplex licence may include conditions—
 - (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1), and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may in particular include conditions—
 - (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
 - (b) providing for the adjustment of any overpayment or underpayment.
- (6) Where—
 - (a) the first complete accounting period of the licence holder falling within the period for which the licence is in force (“the licence period”) does not begin at the same time as that period, or
 - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,

any reference in subsection (1) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

14 Multiplex revenue

- (1) For the purposes of section 13(1) the multiplex revenue for each accounting period of the holder of a multiplex licence shall consist of—
- (a) all payments received or to be received by him or any person connected with him from a person other than a programme provider or an additional services provider—
 - (i) in consideration of the inclusion in that period, in any digital programme service or digital additional service broadcast by means of the multiplex service to which the licence relates, of advertisements or other programmes, or
 - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service or digital additional service,
 - (b) all payments received or to be received by him or any person connected with him in respect of the broadcasting of any qualifying service by means of the multiplex service,
 - (c) all payments received or to be received by any programme provider or any person connected with him from a person other than the holder of the multiplex licence, an additional services provider or another programme provider—
 - (i) in consideration of the inclusion in that period, in any digital programme service provided by him for broadcasting by means of the multiplex service, of advertisements or other programmes, or
 - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service, and
 - (d) all payments received or to be received by any additional services provider or any person connected with him from a person other than the holder of the multiplex licence, a programme provider or another additional services provider—
 - (i) in consideration of the inclusion in that period, in any digital additional service provided by him for broadcasting by means of the multiplex service, of advertisements or other programmes, or
 - (ii) in respect of charges made in that period for the reception of programmes included in any such digital additional service.
- (2) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (1)(a)(i), any payments are made to the holder of the multiplex licence or any connected person to meet any payments payable by the licence holder by virtue of section 13(1), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (3) In the case of an advertisement included as mentioned in subsection (1)(a)(i), (c)(i) or (d)(i) under arrangements made between—
- (a) the holder of the multiplex licence, a programme provider or an additional services provider or any person connected with any of them, and
 - (b) a person acting as an advertising agent,
- the amount of any receipt by the licence holder, programme provider or additional services provider or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (4), be the amount of the payment by the advertiser after the deduction of the commission.

Status: This is the original version (as it was originally enacted).

- (4) If the amount deducted by way of commission as mentioned in subsection (3) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.
- (5) If, in any accounting period of the holder of the multiplex licence, a programme provider or an additional services provider or a person connected with any of them derives, in relation to any programme to be included in the relevant service, any financial benefit (whether direct or indirect) from payments made by any person other than the licence holder, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the relevant payments shall be taken to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (6) In subsection (5)—
- (a) “the relevant service” means—
 - (i) in relation to a programme provider or a person connected with him, any digital programme service provided as mentioned in subsection (1)(c)(i), and
 - (ii) in relation to an additional services provider or a person connected with him, any digital additional service provided as mentioned in subsection (1)(d)(i), and
 - (b) “relevant payments” means—
 - (i) in relation to a programme provider, the payments referred to in subsection (1)(c), and
 - (ii) in relation to an additional services provider, the payments referred to in subsection (1)(d).
- (7) Where, in any accounting period of the holder of the multiplex licence—
- (a) the licence holder provides a digital programme service or digital additional service for broadcasting by means of the multiplex service,
 - (b) the licence holder is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(a) being made to the licence holder,
 - (c) a programme provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(c) being made to the programme provider, or
 - (d) an additional services provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(d) being made to the additional services provider,
- the Commission may, if they consider that the amount which would (apart from this subsection) be the multiplex revenue for that accounting period is less than it would have been if the digital programme service or digital additional service had been provided, or the activity engaged in, by another person at arm’s length, treat the multiplex revenue as increased by the amount of the difference.
- (8) Where, in any accounting period of the holder of the multiplex licence, the licence holder or a programme provider or additional services provider receives payments falling within subsection (1)(a), (b), (c) or (d) from a person connected with him and it appears to the Commission that the amount which (apart from this subsection) would be the multiplex revenue for that accounting period is less than it would have been if the arrangements between him and the connected person were such as might be

expected between parties at arm's length, the Commission may treat the multiplex revenue as increased by the amount of the difference.

(9) In this section—

“additional services provider”, in relation to a multiplex licence, means any person who provides any digital additional service for broadcasting by means of the multiplex service to which the licence relates;

“programme provider”, in relation to a multiplex licence, means any person who provides a digital programme service for broadcasting by means of the multiplex service to which the licence relates.

15 Attribution of multiplex revenue to licence holder and others

(1) For the purposes of section 17(3), the share of multiplex revenue attributable to the holder of a multiplex licence in respect of any accounting period of his shall be—

(a) the aggregate of—

- (i) payments falling within paragraphs (a) or (b) of section 14(1), and
- (ii) payments received or to be received by him from programme providers and additional services providers in respect of the provision of multiplex services in that period,

less

(b) the amount of any payments made or to be made to programme providers or additional service providers which would fall within paragraph (c) or (d) of section 14(1) but for the fact that they are received from the holder of the multiplex licence.

(2) For the purposes of section 23(3) or section 27(3), the share of multiplex revenue attributable to a programme provider or additional services provider in relation to a multiplex service in respect of any accounting period of the holder of the multiplex licence shall be—

(a) the aggregate of—

- (i) payments falling within paragraph (c) or (d) of section 14(1), and
- (ii) payments received or to be received from the holder of the multiplex licence which would fall within one of those paragraphs but for the fact that they are received from the holder of the multiplex licence,

less

(b) the amount of any payments made or to be made to the holder of the multiplex licence in respect of the provision of multiplex services in that period.

(3) In a case falling within subsection (7) or (8) of section 14, the Commission may treat the share of multiplex revenue attributable to any person for the accounting period of the holder of the multiplex licence as increased by such amount as they consider appropriate to take account of the circumstances mentioned in that subsection.

(4) In this section “additional services provider” and “programme provider”, in relation to a multiplex licence, have the same meaning as in section 14.

16 Duration and renewal of multiplex licences

(1) A multiplex licence shall (subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 17(6)) continue in force for a period of twelve years.

Status: This is the original version (as it was originally enacted).

- (2) A multiplex licence granted within six years of the commencement of this section may be renewed on one occasion in accordance with this section for a period of twelve years beginning with the date on which it would otherwise expire.
- (3) An application for the renewal of a multiplex licence under subsection (2) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (4) At any time before determining the application, the Commission may—
 - (a) require the applicant to furnish—
 - (i) a technical plan which supplements that submitted by the licence holder under section 7(4)(b), and
 - (ii) proposals which supplement any proposals submitted by the licence holder under section 7(4)(f), and
 - (b) notify the applicant of requirements which must be met by that supplementary technical plan or those supplementary proposals and relate to the matters referred to in section 7(4)(b)(i) and (ii) and (f).
- (5) The consent of the Secretary of State shall be required for any exercise by the Commission of their powers under subsection (4) and for any decision by the Commission not to exercise those powers; and in deciding whether to give his consent the Secretary of State shall have regard to any report made to him under subsection (1) (b) of section 33 and to any representations received by him on consultation under subsection (4) of that section.
- (6) Where any such application is made before the relevant date, the Commission may postpone consideration of it by them for as long as they think appropriate having regard to subsection (10).
- (7) Where an application for the renewal of a multiplex licence has been duly made to the Commission they may refuse the application only if—
 - (a) it appears to them that the applicant has failed to comply with any of the conditions included in his licence,
 - (b) any supplementary technical plan or supplementary proposals submitted under subsection (4)(a) fail to meet requirements notified to the applicant under subsection (4)(b), or
 - (c) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied with the conditions to be included in the licence as renewed.
- (8) Subject to subsection (9), on the grant of any such application the Commission may with the consent of the Secretary of State, and shall if so required by him—
 - (a) specify a percentage different from that specified under section 7(1)(f) 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, or
 - (b) specify such a percentage where none was specified under section 7(1)(f);and the Commission may specify under paragraph (a) or (b) either of the things mentioned in section 7(2)(b).
- (9) Where an order under section 13(2) is in force on the relevant date, no percentage of multiplex revenue shall be payable as mentioned in subsection (8)(a) during the period for which the licence is to be renewed.

- (10) Where the Commission have granted a person's application under this section, they shall formally renew his licence from the date on which it would otherwise expire; and they shall not so renew his licence unless they have notified him of any percentage specified by them under subsection (8) and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (11) Where a multiplex licence has been renewed under this section, the licence as renewed shall include such further conditions as appear to the Commission to be appropriate for securing the implementation of any supplementary technical plan and supplementary proposals submitted under subsection (4)(a).
- (12) In this section "the relevant date", in relation to a multiplex licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 7(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the service formerly provided under that licence.
- (13) Nothing in this section prevents the holder of a multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 7(1).

17 Enforcement of multiplex licences

- (1) If the Commission are satisfied that the holder of a multiplex licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
 - (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission, or
 - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed whichever is the greater of—
 - (a) £50,000, or
 - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
 - (a) in a case where a penalty under this section has not previously been imposed on the holder of the multiplex licence during any period for which his licence has been in force ("the relevant period"), 3 per cent. of the share of multiplex revenue attributable to him for his last complete accounting period (as determined in accordance with section 15), and
 - (b) in any other case, 5 per cent. of the share of multiplex revenue attributable to him for that accounting period (as so determined),and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the share of multiplex revenue attributable to him for that accounting period (as so determined).

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- (4) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), the Commission may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (6) Section 42 of the 1990 Act (power to revoke Channel 3 or 5 licence) shall have effect in relation to a multiplex licence as it has effect in relation to a Channel 3 licence, but as if the reference in subsection (1)(a) of that section to Part I of the 1990 Act were a reference to this Part.

Digital programme services

18 Licensing of digital programme services

- (1) An application for a licence to provide digital programme services (in this Part referred to as a “digital programme licence”) shall—
 - (a) be made in such manner as the Commission may determine, and
 - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, the Commission may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital programme licence is made to the Commission in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).
- (5) Subject to subsection (6), sections 6 to 12 of the 1990 Act (general provisions relating to services licensed under Part I of that Act) shall apply in relation to a digital programme service licensed under this Part as they apply in relation to a service licensed under that Part of that Act.
- (6) In its application in relation to a digital programme service—
 - (a) section 6 of the 1990 Act shall have effect with the omission of subsection (8), and
 - (b) section 12(1)(b) of that Act shall have effect as if the reference to the Commission’s functions under Chapter II of Part I of that Act included a reference to their functions under this Part.

19 Duration and conditions of digital programme licence

- (1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 23(8), a digital programme licence shall continue in force until it is surrendered by its holder.

Status: This is the original version (as it was originally enacted).

- (2) A digital programme licence shall include such conditions as the Commission consider necessary or appropriate to secure in relation to each service provided under the licence—
 - (a) that a proper proportion of the matter included in the programmes provided by the service is of European origin, and
 - (b) that in each year not less than 10 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the service is allocated to the broadcasting of a range and diversity of independent productions.
- (3) A digital programme licence shall also include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence—
 - (a) on entering into any agreement with the holder of a multiplex licence for the provision of a digital programme service to be broadcast by means of a multiplex service, to notify the Commission—
 - (i) of the identity of the multiplex service,
 - (ii) of the characteristics of the digital programme service to which the agreement relates,
 - (iii) of the period during which it will be provided, and
 - (iv) where under the agreement the holder of the digital programme licence will be entitled to the use of a specified amount of digital capacity, of that amount,
 - (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii), (iii) or (iv), to notify the Commission of the variation so far as relating to those matters, and
 - (c) where he is providing a digital programme service to the holder of a multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Commission of that fact.
- (4) A digital programme licence shall also include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in subsection (3)(a), to submit to the Commission proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his service, together with his proposals for encouraging the training or retraining of persons employed or to be employed by persons providing programmes for inclusion in that service.
- (5) Where the holder of a digital programme licence has submitted proposals to the Commission in accordance with a condition included in the licence by virtue of subsection (4) or has failed to comply with such a condition, the Commission may, after consulting him, vary the licence so as to include in the licence such further conditions as they consider appropriate in relation to the matters referred to in that subsection.
- (6) In framing any condition in pursuance of subsection (2)(a), the Commission shall have regard to such of the international obligations of United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (7) In subsection (2)(b)—
 - (a) “independent productions” and “qualifying programmes” have the same meaning as in section 16(2)(h) of the 1990 Act, and

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- (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (8) The Secretary of State may by order amend subsection (2)(b) by substituting a different percentage for the percentage for the time being specified there.
- (9) Before making an order under subsection (8) the Secretary of State shall consult the Commission; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section “programme” does not include an advertisement.

20 Code relating to provision for deaf and visually impaired

- (1) The Commission shall draw up, and from time to time review, a code giving guidance as to—
 - (a) the extent to which digital programme services and qualifying services should promote the understanding and enjoyment by—
 - (i) persons who are deaf or hard of hearing, and
 - (ii) persons who are blind or partially-sighted,of the programmes to be included in such services, and
 - (b) the means by which such understanding and enjoyment should be promoted.
- (2) In this section “assistance” means assistance of any of the following three kinds, namely—
 - (a) subtitling for the deaf,
 - (b) audio-description for the blind, and
 - (c) presentation in, or translation into, sign language.
- (3) The code must require that, as from the tenth anniversary of the date of the commencement of the provision of any digital programme service, in each week—
 - (a) at least 50 per cent. of so much of the service as consists of programmes which are not excluded programmes in relation to subtitling for the deaf is to be accompanied by such subtitling, and
 - (b) at least 10 per cent. of so much of the service as consists of programmes which are not excluded programmes in relation to audio-description for the blind is to be accompanied by such audio-description.
- (4) The code must specify—
 - (a) in relation to subtitling for the deaf, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirement in paragraph (a) of subsection (3) to apply, and
 - (b) in relation to audio-description for the blind, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirement in paragraph (b) of that subsection to apply.
- (5) If an order under section 21(1)(b) is in force, the code must also specify, in relation to presentation in, or translation into, sign language, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirements specified in the order to apply.

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- (6) In determining under subsection (4) or (5) whether it is appropriate for a particular requirement to apply to any class of programmes, the Commission shall have regard, in particular, to the benefit which the assistance would be likely to confer on the persons for whom it is intended and to the technical difficulty of providing it.
- (7) In this section “excluded programme”, in relation to assistance of a particular kind, means a programme falling within a class specified under subsection (4) or (5) in relation to assistance of that kind.
- (8) Without prejudice to the generality of subsection (1), the code may—
 - (a) require persons providing digital programme services, at any time or times before the anniversary referred to in subsection (3), to meet specified targets in relation to subtitling for the deaf or audio-description for the blind,
 - (b) require a specified percentage of so much of any digital programme service as consists of programmes which are not excluded programmes in relation to presentation in, or translation into, sign language, to be so presented or translated, and
 - (c) require, in relation to assistance of any kind, a specified percentage of so much of any digital programme service as consists of excluded programmes falling within a specified class to be accompanied by assistance of that kind.
- (9) In subsection (8) “specified” means specified in, or determined by the Commission under, the code.
- (10) Subsections (3) and (8), so far as relating to audio-description for the blind or presentation in, or translation into, sign language, shall have effect as if any reference to a digital programme service included a reference to a qualifying service.
- (11) The Commission may determine that, for the purposes of any provision included in the code in pursuance of subsection (3), a digital programme service provided by any person is to be treated as a continuation of a digital programme service previously provided by him.
- (12) Before drawing up the code or reviewing it in pursuance of this section the Commission shall consult such bodies or persons appearing to them to represent the interests of the persons referred to in subsection (1)(a) as the Commission think fit.
- (13) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate; and in determining the manner of publication, the Commission shall have regard to the need to make the code or revision accessible to persons who are blind or partially sighted and persons who are deaf or hard of hearing.
- (14) In this section—
 - “programme” does not include an advertisement;
 - “qualifying service” does not include the qualifying teletext service.

21 Powers of Secretary of State in relation to code under section 20

- (1) The Secretary of State may by order—
 - (a) amend subsection (3) of section 20 by substituting for any percentage specified there a percentage specified in the order, and

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- (b) require the Commission to include in the code maintained under that section the requirement that in each week, at least a percentage specified in the order of so much of any digital programme service or qualifying service as consists of programmes which are not excluded programmes for the purposes of that section in relation to presentation in, or translation into, sign language is to be so presented or translated.
- (2) In subsection (1) “qualifying service” does not include the qualifying teletext service.
- (3) Before making an order under subsection (1), the Secretary of State shall consult the Commission.
- (4) No order under subsection (1) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

22 Compliance with code under section 20

- (1) The Commission shall do all that they can to secure that the provisions of the code maintained by them under section 20 are observed in the provision of digital programme services and qualifying services.
- (2) Without prejudice to the generality of subsection (1), a digital programme licence shall include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in section 19(3)(a), to submit to the Commission proposals for ensuring that the code is complied with in relation to the provision of the digital programme service.
- (3) Where the holder of a digital programme licence has submitted proposals to the Commission in accordance with a condition included in the licence by virtue of subsection (2) or has failed to comply with such a condition, the Commission shall, after consulting him, vary the licence so as to include in the licence such further conditions as they consider appropriate for the purpose of securing compliance with the code in the provision of the digital programme service in question.

23 Enforcement of digital programme licences

- (1) If the Commission are satisfied that the holder of a digital programme licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
 - (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission, or
 - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed whichever is the greater of—
 - (a) £50,000, or
 - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
 - (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital programme licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares

- of multiplex revenue attributable to him in relation to multiplex services in respect of relevant accounting periods (as determined in accordance with section 15), and
- (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) In subsection (3)(a) “relevant accounting period”, in relation to a multiplex service, means the last accounting period of the holder of the multiplex licence.
- (5) Where, in the case of any multiplex service, the first accounting period of the holder of the multiplex licence throughout which the holder of the digital programme licence provides a digital programme service for broadcasting by means of the multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) the share of multiplex revenue attributable to the holder of the digital programme licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which the Commission estimate to be the share of multiplex revenue attributable to him for the first period.
- (6) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), the Commission may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (8) Subject to subsection (9), section 40(1) to (4) (power to direct licensee to broadcast correction or apology or not to repeat programme) and section 42 (power to revoke Channel 3 or 5 licence) of the 1990 Act shall apply in relation to a digital programme licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital programme licence, section 42 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
- (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by the Commission of their powers under subsection (1) in respect of any failure to comply with any condition of a digital programme licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

Digital additional services provided on television broadcasting frequencies

24 Digital additional services

- (1) In this Part “digital additional service” means any service which—
- (a) is provided by any person with a view to its being broadcast in digital form by means of a multiplex service, whether by him or by some other person, but

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- (b) is not a digital programme service, a qualifying service, an ancillary service or a technical service.
- (2) In this Part “ancillary service” means any service which is provided by the holder of a digital programme licence or by an independent analogue broadcaster and consists in the provision of—
- (a) subtitling for the deaf in connection with programmes included in a digital programme service or qualifying service provided by him, or
 - (b) other services (apart from advertising) which—
 - (i) are ancillary to such programmes and directly related to their contents, or
 - (ii) relate to the promotion or listing of such programmes.
- (3) In this Part “technical service” means a service which—
- (a) is provided for technical purposes connected with the encryption or decryption of one or more digital programme services or digital additional services, and
 - (b) is of a description specified in an order made by the Secretary of State.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

25 Licensing of digital additional services

- (1) An application for a licence to provide digital additional services (in this Part referred to as a “digital additional services licence”) shall—
- (a) be made in such manner as the Commission may determine, and
 - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, the Commission may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital additional services licence is made to the Commission in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).
- (5) Subject to subsection (6), sections 6 to 12 of the 1990 Act (general provisions relating to services licensed under Part I of that Act) shall apply in relation to any digital additional service which is licensed under this Part of this Act and is broadcast for general reception in, or in any area in, the United Kingdom as they apply in relation to services licensed under Part I of the 1990 Act.
- (6) In its application in relation to a digital additional service—
- (a) section 6 of the 1990 Act shall have effect with the omission of subsection (8), and
 - (b) section 12(1)(b) of the 1990 Act shall have effect as if the reference to the Commission’s functions under Chapter II of Part I of that Act included a reference to their functions under this Part.

26 Duration and conditions of digital additional services licence

- (1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 27(8), a digital additional services licence shall continue in force until it is surrendered by its holder.
- (2) A digital additional services licence shall include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence—
 - (a) on entering into any agreement with the holder of a multiplex licence for the broadcasting of digital additional services by means of a multiplex service, to notify the Commission—
 - (i) of the identity of the multiplex service,
 - (ii) of the period during which the services will be provided,
 - (iii) where under the agreement the holder of the digital additional services licence will be entitled to the use of a specified amount of digital capacity, of that amount,
 - (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify the Commission of the variation so far as relating to those matters, and
 - (c) where he is providing digital additional services to the holder of a multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Commission of that fact.

27 Enforcement of digital additional services licences

- (1) If the Commission are satisfied that the holder of a digital additional services licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
 - (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission, or
 - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed whichever is the greater of—
 - (a) £50,000, or
 - (b) the amount determined under subsection (3).
- (3) The amount referred to in subsection (2)(b) is—
 - (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital additional services licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to multiplex services in respect of relevant accounting periods (as determined in accordance with section 15), and
 - (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) In subsection (3)(a) “relevant accounting period”, in relation to a multiplex service, means the last accounting period of the holder of the multiplex licence.

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- (5) Where, in the case of any multiplex service, the first accounting period of the holder of the multiplex licence throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting by means of the multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) the share of multiplex revenue attributable to the holder of the digital additional services licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which the Commission estimate to be the share of multiplex revenue attributable to him for the first period.
- (6) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), the Commission may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (8) Subject to subsection (9), sections 40(1) to (4) and section 42 of the 1990 Act shall apply in relation to a digital additional services licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital additional services licence, section 42 of the 1990 Act shall have effect—
 - (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
 - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by the Commission of their powers under subsection (1) in respect of any failure to comply with any condition of a digital additional services licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

Digital broadcasting of services provided by independent analogue broadcasters

28 Provision for broadcasting of services provided by independent analogue broadcasters

- (1) The Secretary of State shall exercise his powers under this section for the purposes of—
 - (a) facilitating the broadcasting of qualifying services by means of multiplex services licensed under this Part, and
 - (b) entitling any independent analogue broadcaster who in accordance with this section provides a qualifying service for broadcasting in digital form on a frequency to the use of digital capacity on that frequency.
- (2) The Secretary of State shall, in assigning frequencies to the Commission under section 6, by direction to the Commission—
 - (a) designate one or two frequencies as frequencies to which this section applies, and

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- (b) specify in relation to each frequency so designated—
 - (i) the independent analogue broadcasters for whom digital capacity is to be reserved in accordance with this section,
 - (ii) the amount of digital capacity to be so reserved for each of them,
 - (iii) the times of day between which or days of the week on which such capacity is to be so reserved,
 - (iv) the area in the United Kingdom in which each of them is to be permitted to provide services, and
 - (v) the qualifying services which, subject to the provisions of this section, are intended to be broadcast on that frequency.
- (3) The Secretary of State may by order—
 - (a) provide, in relation to any frequency to which this section applies—
 - (i) that any or all of the provisions of sections 7 to 16 and sections 18 and 19 are not to apply, or are to apply with specified modifications, and
 - (ii) that provisions of the order are to have effect in place of any or all of those provisions,
 - (b) provide for the Commission to include in any multiplex licence granted in respect of any such frequency such conditions as may be specified in, or determined by them under, the order, including conditions for securing the result specified in subsection (4),
 - (c) provide for the Commission to vary any licence under which the service specified in section 2(3) corresponding to the qualifying service (“the corresponding analogue service”) is provided so as to include such conditions relating to the broadcasting of the qualifying service as may be specified in, or determined by the Commission under, the order and to include those conditions in any other licence under which the corresponding analogue service is subsequently provided, and
 - (d) make such other provision for either of the purposes specified in subsection (1) as he considers appropriate.
- (4) The result referred to in subsection (3)(b) is that, in consideration of the making, by any independent analogue broadcaster specified under subsection (2)(b)(i) in relation to the frequency concerned, of such payments as are from time to time agreed between him and the holder of the multiplex licence or (in default of agreement) determined by the Commission under the order, the holder of that licence will use the digital capacity specified under subsection (2)(b)(ii) for the broadcasting of services provided by that broadcaster.
- (5) Where under subsection (2)(b) digital capacity is reserved only between particular times, on particular days or in a particular area, the reference in subsection (4) to broadcasting is a reference to broadcasting between those times, on those days or in that area.
- (6) Without prejudice to the generality of section 200(2)(a) of the 1990 Act (which provides that orders may make different provision for different cases), an order under this section may make different provision for different frequencies.
- (7) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

29 The S4C digital service

- (1) If the Welsh Authority provide S4C Digital, it shall be their duty—
 - (a) to provide it as a public service for disseminating information, education and entertainment,
 - (b) to ensure that all the programmes in Welsh which are broadcast on S4C are broadcast on S4C Digital at the same time, and
 - (c) to ensure that the programmes which are broadcast on S4C Digital but not on S4C maintain—
 - (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
 - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.
- (2) Sections 57(4), 58(5), 59, 60 and 64 of the 1990 Act shall apply in relation to S4C Digital as they apply in relation to S4C.
- (3) No payment shall be required by the BBC in respect of the broadcasting pursuant to subsection (1)(b) of programmes provided by them under section 58(1) of the 1990 Act.
- (4) In this section “programme” does not include an advertisement.

30 The qualifying teletext service

- (1) If the public teletext provider has notified the Commission under section 2(5) of his intention to provide a teletext service for broadcasting in digital form as a qualifying service, he shall submit to the Commission his proposals for providing that service in compliance with the requirements specified in subsection (3).
- (2) The Commission shall give their consent to the provision of the service unless it appears to them that the proposed service would not comply with the requirements specified in subsection (3).
- (3) The requirements referred to in subsections (1) and (2) are—
 - (a) that the service includes a sufficient amount of news items which are of high quality and deal with both national and international matters,
 - (b) that the service includes a sufficient amount of information which is of particular interest to persons living within different areas for which the service is provided, and
 - (c) that (taken as whole) the service includes a sufficient amount of information (other than news) which is calculated to appeal to a wide variety of tastes and interests.
- (4) Where the Commission have given their consent under subsection (2), they shall vary the relevant licence held by the public teletext provider so as to include such conditions as appear to them to be appropriate—
 - (a) for imposing on the public teletext provider, in specified circumstances, an obligation to provide the qualifying teletext service, and
 - (b) for securing that the qualifying teletext service, if provided, accords with the proposals submitted under subsection (1);

and they may include those conditions in any other licence under which the analogue service is subsequently provided.

(5) Sections 6 to 12 of the 1990 Act (general provisions relating to services licensed under Part I of that Act) shall apply in relation to the qualifying teletext service as they apply in relation to the analogue service, but as if the reference in section 12(1)(b) of the 1990 Act to the Commission’s functions under Chapter II of Part I of that Act included a reference to their functions under this Part.

(6) In this section—

“the analogue service” means the service referred to in section 49(2) of the 1990 Act;

“the relevant licence” means the additional services licence (within the meaning of Part I of the 1990 Act) under which the analogue service is provided.

31 Advertisements included in qualifying services

Where an independent analogue broadcaster other than the Welsh Authority or the public teletext provider includes in a qualifying service advertisements which are not included in the corresponding analogue service (within the meaning of section 2(2)), sections 8 and 9 of the 1990 Act shall have effect as if the provision of the advertisements constituted the provision of a service licensed under Part I of the 1990 Act.

Miscellaneous and supplemental

32 Digital broadcasting of Gaelic programmes

(1) The Secretary of State may by order provide for the Commission to include in any multiplex licence granted in respect of one frequency to which section 28 applies such conditions relating to the broadcasting of programmes in Gaelic for reception wholly or mainly in Scotland as may be specified in, or determined by them under, the order.

(2) The Secretary of State may by order require the holder of a multiplex licence (“the holder”), in complying with any such conditions, to broadcast programmes in Gaelic supplied by each of the persons mentioned in subsection (4) (“the suppliers”) amounting to such minimum number of hours (if any) of transmission time per year as may be specified in the order in relation to that supplier.

(3) For the purpose of enabling the holder to comply with any such conditions and any obligation imposed by virtue of subsection (2), it shall be the duty of each supplier to provide the holder, free of charge, with such programmes in Gaelic which have been broadcast by the supplier as the holder may request.

(4) The suppliers are—

(a) the BBC,

(b) the Channel Four Television Corporation,

(c) any holder of a Channel 3 licence to provide a regional Channel 3 service (within the meaning of Part I of the 1990 Act) for reception wholly in Scotland, and

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- (d) such other persons providing television broadcasting services as may be specified by order by the Secretary of State.
- (5) Subsection (3) shall not apply in relation to any programme first broadcast by the supplier concerned—
 - (a) before 1st January 1993, or
 - (b) in the period beginning on 1st January 1993 and ending on 31st March 1997, if the supplier has no right to broadcast it again or has such a right but is not entitled to transfer it to the holder.
- (6) The holder may broadcast any programme supplied by virtue of subsection (3) on one occasion only.
- (7) The holder shall consult Comataidh Craolaidh Gaidhlig and the suppliers about—
 - (a) the quantity of programmes likely to be requested by the holder from each supplier by virtue of subsection (3), and
 - (b) the schedules proposed for the broadcast by the holder of programmes supplied by virtue of that subsection,
 and shall have regard to any comments made as a result of such consultation.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section “Gaelic” means the Gaelic language as spoken in Scotland.

33 Review of digital television broadcasting

- (1) For the purpose of considering for how long it would be appropriate for television broadcasting services to continue to be provided in analogue form, the Secretary of State—
 - (a) shall keep under review the extent of—
 - (i) the provision in the United Kingdom of multiplex services,
 - (ii) the availability in the United Kingdom in digital form of the services specified in section 2(3), S4C Digital, the qualifying teletext service, and the television broadcasting services of the BBC, and
 - (iii) the ownership or possession in the United Kingdom of equipment capable of receiving the services referred to in sub-paragraph (ii) when broadcast or transmitted in digital form,
 and the likely future extent of such provision, such availability and such ownership or possession, and
 - (b) shall, on or before the fourth anniversary of the day on which the first multiplex licence is granted under section 8, and at such time or times thereafter as he thinks fit, require the Commission and the BBC to report to him on the matters referred to in paragraph (a).
- (2) If the Commission or the BBC are required to submit a report under subsection (1)(b), they shall submit the report within twelve months of the date of the requirement.
- (3) Before making any report under subsection (1)(b), the Commission shall consult—
 - (a) the holders of all multiplex licences,
 - (b) the holders of digital programme licences who are providing digital programme services which are being broadcast,

- (c) such other persons providing services licensed by the Commission under this Part or Part I or II of the 1990 Act as the Commission think fit, and
- (d) the Welsh Authority;

and the Commission shall include in their report a summary of representations made to them by the persons consulted.

- (4) For the purpose mentioned in subsection (1), the Secretary of State shall, on requiring reports under subsection (1)(b), consult—
 - (a) such persons appearing to him to represent viewers as he thinks fit, and
 - (b) such other persons as he thinks fit,in connection with the matters referred to in subsection (1)(a) and also, if the Secretary of State thinks fit, as to the likely effects on viewers of any television broadcasting service ceasing to be broadcast in analogue form.
- (5) In this section “television broadcasting service” has the same meaning as in Part I of the 1990 Act.

34 Promotion of equal opportunities and fair treatment

- (1) Any multiplex licence or digital programme licence shall include conditions requiring the licence holder—
 - (a) to make arrangements for promoting, in relation to employment by him, equality of opportunity between men and women and between persons of different racial groups,
 - (b) to make arrangements for promoting, in relation to employment by him, the fair treatment of disabled persons, and
 - (c) to review those arrangements from time to time.
- (2) In subsection (1) “racial group” has the same meaning as in the Race Relations Act 1976, and “disabled person” has the same meaning as in the Disability Discrimination Act 1995.

35 Enforcement of licences held by BBC companies

Where the Commission—

- (a) give a direction to a BBC company under section 40(1) of the 1990 Act as applied by section 23(8) or 27(8),
- (b) serve a notice on a BBC company under any provision of section 17, 23 or 27, or
- (c) receive any representations from a BBC company under section 17(4), 23(6) or 27(6) or under section 42 of the 1990 Act as so applied,

the Commission shall send a copy of the direction, notice or representations to the Secretary of State.

36 Power to vary amount of financial penalties

- (1) The Secretary of State may by order amend any of the provisions specified in subsection (2) by substituting a different sum for the sum for the time being specified there.
- (2) The provisions referred to in subsection (1) are—

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section 11(5)(a);
 section 17(2)(a);
 section 23(2)(a); and
 section 27(2)(a).

- (3) An order under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

37 Computation of multiplex revenue

Part I of Schedule 1 (which contains provisions relating to the computation of multiplex revenue for the purposes of this Part) shall have effect.

38 Certain receipts of Commission to be paid into Consolidated Fund

- (1) Where, in respect of any licence granted under this Part, the Commission receive any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Commission but shall—
- (a) if the licence is for the provision of a service for any area in Great Britain, be paid into the Consolidated Fund of the United Kingdom,
 - (b) if the licence is for the provision of a service for any area in Northern Ireland, be paid into the Consolidated Fund of Northern Ireland, or
 - (c) in any other case, be paid into whichever of those Funds the Commission consider appropriate or into both of those Funds in such proportions as the Commission consider appropriate.
- (2) The amounts referred to in subsection (1) are amounts payable to the Commission by virtue of any of the following provisions—
- section 11(5);
 section 13(1);
 section 17(1);
 section 23(1);
 section 27(1).
- (3) Subsection (1) shall not be construed as applying to any amount which is required by the Commission for the making of an adjustment in respect of an overpayment made by any person.
- (4) Any amount payable by any person to the Commission under or by virtue of this Part shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of a licence granted under this Part, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (5) The Commission shall, in respect of each financial year, prepare an account showing—
- (a) all such amounts falling within subsection (1) as have been received by them, and
 - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,

and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the

Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

39 Interpretation of Part I

(1) In this Part—

“ancillary service” has the meaning given by section 24(2);

“a Channel 3 licence” has the same meaning as in Part I of the 1990 Act and “a Channel 3 service” means a regional or national Channel 3 service (within the meaning of that Part);

“Channel 4”, “Channel 5” and “a Channel 5 licence” have the same meaning as in Part I of the 1990 Act;

“the Commission” means the Independent Television Commission;

“digital additional service” has the meaning given by section 24(1), and “digital additional services licence” means a licence to provide such services;

“digital programme service” has the meaning given by section 1(4), and “digital programme licence” means a licence to provide such services;

“independent analogue broadcaster” has the meaning given by section 2(1);

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“multiplex service” has the meaning given by section 1(1), and “multiplex licence” means a licence to provide such a service;

“public teletext provider” has the meaning given by section 2(6);

“qualifying service” has the meaning given by section 2(2);

“qualifying teletext service” means the public teletext service provided by the public teletext provider for broadcasting in digital form as a qualifying service;

“S4C” and “on S4C” have the same meaning as in Part I of the 1990 Act;

“S4C Digital” means the service referred to in section 57(1A)(a) of the 1990 Act, and “on S4C Digital” means in that service;

“technical service” has the meaning given by section 24(3).

(2) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.