



Broadcasting Act 1996

1996 CHAPTER 55

PART II

DIGITAL TERRESTRIAL SOUND BROADCASTING

Radio multiplex services

45 Assignment of frequencies by Secretary of State

- (1) The Secretary of State may by notice assign to the Authority, for the purpose of the provision of radio multiplex services falling to be licensed by them under this Part, such frequencies as he may determine.
- (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) When assigning a frequency under subsection (1), the Secretary of State shall specify whether the frequency is to be assigned for the purpose of the provision of a national radio multiplex service or for the purpose of the provision of a local radio multiplex service; and any frequency assigned under that subsection shall be taken to be so assigned only for that purpose.
- (4) When assigning a frequency under subsection (1) for the purpose of the provision of a national radio multiplex service, the Secretary of State may also direct the Authority to secure that the holder of the licence to provide that service is required—
 - (a) to broadcast one or more digital sound programme services of a particular character, or
 - (b) not to broadcast more than a specified number of digital sound programme services of a particular character.
- (5) References in subsection (4) to digital sound programme services of a particular character include references to digital sound programme services catering for the tastes and interests of persons living within a specified area or locality.

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- (6) The Secretary of State may by notice revoke the assignment under subsection (1) of any frequency specified in the notice, and may do so whether or not that frequency is for the time being one on which a radio multiplex service is being provided.

46 National radio multiplex licences

- (1) Where the Authority propose to grant a licence to provide a national radio multiplex service, 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 on which the service is to be provided,
 - (c) specifying, in such manner as the Authority consider appropriate, the area of the United Kingdom in which the frequency is to be available,
 - (d) where digital capacity on the frequency is reserved in pursuance of a direction under section 48 for the broadcasting of a simulcast radio service, stating that fact and specifying the capacity reserved and the identity of the national service or services concerned,
 - (e) where the frequency is one in respect of which a direction under section 45(4) has been given, setting out the terms of the direction,
 - (f) inviting applications for the licence and specifying the closing date for such applications,
 - (g) specifying the fee payable on any application made in pursuance of the notice, and
 - (h) stating whether any percentage of multiplex revenue for each accounting period would be payable by an applicant in pursuance of section 55 if he were granted the licence and, if so, specifying that percentage.
- (2) Unless an order under section 55(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)(h), and
 - (b) the Authority may if they think fit (with that consent) specify under subsection (1)(h)—
 - (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 Authority—
- (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) Any 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)(g),
 - (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,

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- (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 sound programme services to be broadcast and as to the characteristics of each of those services,
 - (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 the service,
 - (g) such information as the Authority 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 Authority may reasonably require for the purpose of considering the application.
- (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 Authority 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 Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (8) The Authority 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 Authority 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.

47 Award of national radio multiplex licences

- (1) Where the Authority have published a notice under section 46(1), they shall in determining whether, or to whom, to award the national radio multiplex licence in question, have regard to the extent to which, taking into account the matters specified in subsection (2) and any representations received by them in pursuance of section 46(8)(b) with respect to those matters, the award of the licence to each applicant would be calculated to promote the development of digital sound broadcasting in the United Kingdom otherwise than by satellite.
- (2) The matters referred to in subsection (1) are—

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- (a) the extent of the coverage area (within the area specified in the notice under section 46(1)(c)) proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 46(4)(b),
 - (b) the timetables proposed by the applicant under section 46(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 sound 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 the service, and
 - (f) whether, in contracting or offering to contract with persons providing digital sound 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 a direction under section 45(4) has effect in relation to any frequency, the Authority shall not award a national radio multiplex licence in relation to that frequency unless they are satisfied that the proposals submitted by the applicant under section 46(4)(c) comply with the direction.
- (5) Where the Authority have awarded a national radio 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 Authority consider appropriate, and
 - (b) grant the licence to that person.

48 Reservation of capacity for independent national broadcasters

- (1) The Secretary of State may, in assigning a frequency to the Authority under section 45 for the purpose of the provision of a national radio multiplex service, direct the Authority that, in relation to each independent national broadcaster specified in the direction, an amount of digital capacity specified in the direction is to be reserved, subject to the provisions of this Part, for the broadcasting of a simulcast radio service.
- (2) Before giving a direction under subsection (1) in relation to any simulcast radio service, the Secretary of State shall consult the Authority as to the amount of digital capacity which the Authority consider appropriate in all the circumstances for the broadcasting of that service.
- (3) Where a direction under subsection (1) has been given in relation to a frequency—
- (a) the Authority shall include in any national radio multiplex licence granted in respect of that frequency such conditions as appear to them to be appropriate for securing that, in consideration of the making by any independent national broadcaster in relation to whom capacity is reserved of such payments as are from time to time agreed between him and the licence holder or (in default of agreement) determined under this section, the licence holder uses such digital capacity not exceeding the amount reserved under subsection (1) as may from

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- time to time be requested by the independent national broadcaster for the broadcasting of services provided by that broadcaster, and
- (b) the Authority shall vary the licence under which the national service is provided to include such conditions relating to the broadcasting of the simulcast radio service as they may determine.
- (4) Where the holder of a national radio multiplex licence and an independent national broadcaster fail to agree as to the payments to be made under a condition included in the licence in accordance with subsection (3)(a), either of them may refer the matter to the Authority for their determination.
- (5) Before making a determination under subsection (4), the Authority shall give the licence holder and the independent national broadcaster an opportunity of making representations to the Authority about the matter.
- (6) In making any determination under subsection (4), the Authority shall have regard to—
- (a) the expenses incurred, or likely to be incurred, by the licence holder in providing the national radio multiplex service and in broadcasting the simulcast radio service in question, and
 - (b) the terms on which persons providing national radio multiplex services contract with persons providing national digital sound programme services for the broadcasting of those services.

49 Duty of Authority to reserve digital capacity for certain purposes of BBC

- (1) In exercising their powers to grant local radio multiplex licences, the Authority shall reserve to the BBC such digital capacity as the Authority consider appropriate in all the circumstances with a view to enabling every BBC local radio service and every BBC radio service for Wales, Scotland or Northern Ireland to be received in digital form within a coverage area which, so far as reasonably practicable, corresponds with the coverage area for that service as provided otherwise than in digital form.
- (2) The circumstances to which the Authority may have regard in performing their duty under subsection (1) include the likely demand for digital capacity by persons providing or proposing to provide local digital sound programme services.
- (3) Where the Authority propose to grant a licence to provide a local radio multiplex service, they shall notify the BBC of the Authority's proposals for reserving to the BBC digital capacity on the frequency in respect of which the licence is to be granted in respect of the area or locality in which it is to be granted.
- (4) If the BBC do not give their consent to the proposals within such period as the Authority may specify in their notice under subsection (3), the Authority shall refer the proposals to the Secretary of State, who may determine—
- (a) whether any digital capacity is to be reserved to the BBC on the grant of the licence, and
 - (b) if so, the amount of that capacity.
- (5) Before making any determination under subsection (4), the Secretary of State shall give the Authority and the BBC an opportunity of making representations to him about the Authority's proposals.

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- (6) Where a local radio multiplex licence is granted in respect of a frequency and area or locality in respect of which digital capacity is reserved in pursuance of this section, the licence shall include such conditions as appear to the Authority to be appropriate for the purpose of securing that, in consideration of the making by the BBC of such payments as are from time to time agreed between the holder of the licence and the BBC, the holder of the licence uses such digital capacity as may from time to time be requested by the BBC (not exceeding the amount so reserved) for the broadcasting of services provided by the BBC.

50 Local radio multiplex licences

- (1) Where—
- (a) the BBC have given their consent to proposals made to them under subsection (3) of section 49, or
 - (b) the Secretary of State has made a determination under subsection (4) of that section,
- the Authority shall publish, in such manner as they consider appropriate, a notice under subsection (2).
- (2) A notice under this subsection is a notice—
- (a) stating that the Authority propose to grant a local radio multiplex licence,
 - (b) specifying the frequency on which the service is to be provided,
 - (c) specifying, in such manner as the Authority consider appropriate, the area or locality in the United Kingdom in which it is to be available,
 - (d) stating whether in pursuance of a direction under section 49 any digital capacity on the frequency in that area or locality is to be reserved for the broadcasting in digital form of one or more BBC radio services and, if so, specifying the capacity reserved and the identity of the BBC radio services concerned,
 - (e) inviting applications for the licence and specifying the closing date for such applications, and
 - (f) specifying the fee payable on any application made in pursuance of the notice.
- (3) When publishing a notice under subsection (2), the Authority—
- (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
 - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) Any application made in pursuance of a notice under subsection (2) must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (2)(f),
 - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
 - (i) the parts of the area or locality specified under subsection (2)(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,

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- (c) the applicant's proposals as to the number of digital sound programme services (other than BBC services) to be broadcast and as to the characteristics of each of those services,
 - (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) such information as the Authority 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
 - (g) such other information as the Authority may reasonably require for the purpose of considering the application.
- (5) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under any of paragraphs (b) to (g) of subsection (4).
- (6) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (7) The Authority shall, as soon as reasonably practicable after the date specified in a notice under subsection (2) 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 Authority 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.

51 Award of local radio multiplex licences

- (1) Where the Authority have published a notice under section 50(2), they shall in determining whether, or to whom, to award the local radio multiplex licence in question, have regard (in relation to each applicant) to the matters specified in subsection (2).
- (2) The matters referred to in subsection (1) are—
- (a) the extent of the coverage area (within the area or locality specified in the notice under section 50(2)(c)) proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 50(4)(b),
 - (b) the timetables proposed by the applicant under section 50(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 extent to which the digital sound programme services (other than BBC services) proposed to be included in the service would cater for the tastes and interests of persons living in the area or locality for which the service is to

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be provided and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which those services would cater for those tastes and interests,

- (e) the extent to which any such digital sound programme services would broaden the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which it is to be provided and, in particular, the extent to which they would cater for tastes and interests different from those already catered for by local digital sound programme services provided for that area or locality,
 - (f) the extent to which the application is supported by persons living in that area or locality, and
 - (g) whether, in contracting or offering to contract with persons providing digital sound programme services or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of those services.
- (3) In considering the matters referred to in subsection (2), the Authority shall take into account any representations made to them in pursuance of section 50(7)(b) with respect to those matters.
- (4) Where the Authority have awarded a local radio 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 Authority consider appropriate, and
 - (b) grant the licence to that person.

52 Power to require two or more local radio multiplex licences to be granted to one person

- (1) The Authority may, before publishing a notice under section 50(2), determine that two or more local radio multiplex licences are on that occasion to be granted to one person.
- (2) Where the Authority have so determined, they shall publish a single notice under section 50(2) in relation to the licences.
- (3) In relation to any application made in pursuance of such a notice—
- (a) references in section 50(4) and 51(2) to the proposed service shall have effect as references to each of the proposed services, and
 - (b) the reference in section 51(1) to the local radio multiplex licence shall have effect as a reference to all the licences concerned.
- (4) Nothing in this section applies in relation to the renewal of a local radio multiplex licence.

53 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 radio multiplex licence has been granted to any person but before the licence has come into force—

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- (a) that person indicates to the Authority that he does not intend to provide the service in question, or
 - (b) the Authority 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 Authority 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 Authority 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 47 or 51 shall (subject to subsection (4)) have effect as if he had not made an application for the licence.
- (4) Section 47 or 51 shall not have effect as mentioned in subsection (3) if the Authority decide that it would be desirable to publish a fresh notice under section 46(1) or 50(2) in respect of the grant of the licence.
- (5) Where the Authority revoke a radio 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—
- (a) in the case of a local radio multiplex licence, £50,000, or
 - (b) in the case of a national radio multiplex licence, whichever is the greater of—
 - (i) £50,000, or
 - (ii) the prescribed amount.
- (6) In subsection (5)(b)(ii) “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 Authority estimate would have been the multiplex revenue for that accounting period (as determined in accordance with section 56), 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 71(4), be recoverable by the Authority as a debt due to them from any person who controls that body.

54 Conditions attached to national or local radio multiplex licence

- (1) A radio multiplex licence shall include such conditions as appear to the Authority 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 46(4)(b) or 50(4)(b),

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- (b) the implementation of any proposals submitted by the licence holder under section 46(4)(c) to (f) or 50(4)(c) to (e),
 - (c) that all digital sound programme services broadcast under the licence are provided—
 - (i) in the case of a national radio multiplex licence, by the holder of a national digital sound programme licence under section 60, and
 - (ii) in the case of a local radio multiplex licence, by the BBC or the holder of a local digital sound programme licence under that section,
 - (d) that all digital additional services broadcast under the licence are provided by the holder of a licence under section 64,
 - (e) that in the terms on which the holder of the licence contracts, or offers to contract, for the broadcasting of digital sound 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 holder of the licence does not, in any agreement with a person providing a digital sound 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 radio multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area or locality 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 sound programme services, simulcast radio services, programme-related services or relevant technical services.
- (2) In paragraph (1)(h)—
- (a) “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 digital sound programme services, simulcast radio services or local or national 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
 - (b) “relevant technical service” means any technical service which relates to one or more digital sound programme services.
- (3) The Secretary of State may, after consulting the Authority, by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in paragraph (h) of that subsection.
- (4) No order under subsection (3) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

- (5) Any conditions imposed in pursuance of subsection (1)(a) or (b) may be varied by the Authority with the consent of the licence holder (and section 42(3)(b) shall accordingly not apply to any such variation).
- (6) Where the licence holder applies to the Authority for the variation of any condition imposed in pursuance of subsection (1)(b) and relating to the characteristics of any of the digital sound programme services to be broadcast under the licence, the Authority shall vary the condition accordingly unless—
 - (a) it appears to the Authority that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished, or
 - (b) in the case of a national radio multiplex licence in relation to which a direction under section 45(4) has effect, the Authority are not satisfied that the proposed variation complies with that direction.
- (7) Section 94 of the 1990 Act (Government control over licensed services) shall apply in relation to a radio multiplex service licensed under this Part as it applies in relation to a service licensed under Part III of that Act.

55 Additional payments to be made in respect of national radio multiplex licences

- (1) Where a national radio multiplex licence is granted in pursuance of a notice under subsection (1) of section 46 which specified a percentage of multiplex revenue under paragraph (h) of that subsection, the licence shall include conditions requiring the licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 43(1)(c)) 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 56) 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 46 published while the order is in force, no percentage shall be specified under paragraph (h) 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 national radio multiplex licence may include conditions—
 - (a) enabling the Authority 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 Authority 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

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- (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.

56 Multiplex revenue

- (1) For the purposes of section 55(1) the multiplex revenue for each accounting period of the holder of a national radio 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 sound programme service or digital additional service broadcast by means of the national radio 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 sound 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 simulcast radio service by means of the national radio 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 radio multiplex licence, an additional service provider or another programme provider—
 - (i) in consideration of the inclusion in that period, in any digital sound programme service provided by him for broadcasting by means of the national radio 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 sound 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 radio 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 national radio 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 radio multiplex licence or any person connected with him to meet any payments payable by the licence holder by virtue of section 55(1),

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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 radio 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.

(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 radio 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 sound 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 radio multiplex licence—

- (a) the licence holder provides a digital sound 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

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- (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 Authority 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 sound 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 Authority 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 Authority may treat the multiplex revenue as increased by the amount of the difference.

- (9) In this section—

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

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

57 Attribution of multiplex revenue to licence holder and others

- (1) For the purposes of section 59(3), the share of multiplex revenue attributable to the holder of a national radio multiplex licence in respect of any accounting period of his shall be—

- (a) the aggregate of—
- (i) payments falling within paragraph (a) or (b) of section 56(1), and
 - (ii) payments received or to be received by him from programme providers and additional services providers in respect of the provision of radio 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 56(1) but for the fact that they are received from the holder of the national radio multiplex licence.

- (2) For the purposes of section 62(3) or section 66(3), the share of multiplex revenue attributable to a programme provider or additional services provider in relation to a national radio multiplex service in respect of any accounting period of the holder of the radio multiplex licence shall be—

- (a) the aggregate of—
- (i) payments falling within paragraph (c) or (d) of section 56(1), and

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- (ii) payments received or to be received from the holder of the radio multiplex licence which would fall within one of those paragraphs but for the fact that they are received from the holder of the radio multiplex licence,
 - less
 - (b) the amount of any payments made or to be made to the holder of the radio multiplex licence in respect of the provision of radio multiplex services in that period.
- (3) In a case falling within subsection (7) or (8) of section 56, the Authority may treat the share of multiplex revenue attributable to any person for the accounting period of the holder of the national radio 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 national radio multiplex licence, have the same meaning as in section 56.

58 Duration and renewal of national or local radio multiplex licences

- (1) A radio multiplex licence shall (subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 59(8)) continue in force for a period of twelve years.
- (2) A radio multiplex licence which is 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 radio 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 Authority may—
 - (a) require the applicant to furnish—
 - (i) a technical plan which supplements that submitted by the licence holder under section 46(4)(b) or 50(4)(b), and
 - (ii) in the case of a national radio multiplex licence, proposals which supplement that submitted by the licence holder under section 46(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 46(4)(b)(i) and (ii) or 50(4)(b)(i) and (ii).
- (5) The consent of the Secretary of State shall be required for any exercise by the Authority of their powers under subsection (4) and for any decision by the Authority 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 67 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 Authority may postpone consideration of it by them for as long as they think appropriate having regard to subsection (10).

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- (7) Where an application for the renewal of a radio multiplex licence has been duly made to the Authority, 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 Authority 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 46(1)(h) as the percentage of multiplex revenue for each accounting period of his that will be payable by the applicant in pursuance of section 55(1) during the period for which the licence is to be renewed, or
 - (b) specify such a percentage where none was specified under section 46(1)(h);
- and the Authority may specify under paragraph (a) or (b) either of the things mentioned in section 46(2)(b).
- (9) Where an order under section 55(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 Authority have granted a person's application under this section, they shall formally renew his licence from the date on which it would otherwise expire; but in the case of a national multiplex licence 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 radio multiplex licence has been renewed under this section, the licence as renewed shall include such further conditions as appear to the Authority 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 radio multiplex licence, means the date which the Authority determine to be that by which they would need to publish a notice under section 46(1) or 50(2) 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 radio multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 46(1) or 50(2).

59 Enforcement of national or local radio multiplex licences

- (1) If the Authority are satisfied that the holder of a radio multiplex licence has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—

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- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Authority, 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 in pursuance of subsection (1)(a) on the holder of a national radio multiplex licence 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 radio 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 57), 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 Authority estimate to be the share of multiplex revenue attributable to him for that accounting period (as so determined).
- (4) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a local radio multiplex licence shall not exceed £50,000.
- (5) The Authority shall not serve on any person any notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (6) 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 Authority 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.
- (7) Where the Authority serve a notice on a BBC company under any provision of this section, they shall send a copy of the notice to the Secretary of State.
- (8) Subject to subsection (9), section 111 of the 1990 Act (power to revoke licence granted under Chapter II of Part III of the 1990 Act) shall have effect in relation to a radio multiplex licence as it has effect in relation to a licence under Chapter II of Part III of the 1990 Act.
- (9) In its application in relation to a radio multiplex licence, section 111 of the 1990 Act shall have effect—
 - (a) with the substitution in subsection (1)(a) for the reference to Part III of the 1990 Act of a reference to this Part, and
 - (b) with the omission of subsection (4) and the reference to that subsection in subsection (6).