



# Broadcasting Act 1996

## 1996 CHAPTER 55

### PART II

#### DIGITAL TERRESTRIAL SOUND BROADCASTING

##### *Introductory*

#### **40 Radio multiplex services**

- (1) In this Part “radio 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 63(1)).
- (2) A service in respect of which a licence under section 46 or 50 is in force is not prevented from being a radio 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 sound programme service (as defined by subsection (5)), or
  - (b) a simulcast radio service (as defined by section 41(2)).
- (4) A radio multiplex service provided on a frequency or frequencies assigned to the Authority under section 45(1) may be either—
  - (a) provided for a particular area or locality in the United Kingdom (a “local radio multiplex service”), or
  - (b) provided without any restriction by virtue of this Act to a particular area or locality in the United Kingdom (a “national radio multiplex service”).
- (5) In this Part “digital sound programme service” means a service consisting in the provision by any person of programmes consisting wholly of sound (together with any ancillary services, as defined by section 63(2)) with a view to their being broadcast

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in digital form for general reception, whether by him or by some other person, but does not include—

- (a) a simulcast radio service (as defined by section 41(2)), or
- (b) a service where the sounds are to be received through the use of coded reference to pre-defined phonetic elements of sounds.

(6) 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 sound programme service” in subsection (5).

(7) No order under subsection (6) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(8) 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.

#### **41 Meaning of “independent national broadcaster” and “simulcast radio service”**

(1) In this Part “independent national broadcaster” means any person who is the holder of a national licence (within the meaning of Part III of the 1990 Act).

(2) In this Part a “simulcast radio service” means any service provided for broadcasting in digital form—

- (a) which is provided by an independent national broadcaster who has notified the Authority, within the period of one month beginning with the commencement of this section, of his intention to provide a service for broadcasting in that form which corresponds to a national service (within the meaning of Part III of the 1990 Act) provided by him otherwise than in that form, and
- (b) which corresponds to that national service.

(3) For the purposes of this Part a service provided for broadcasting in digital form corresponds to a national service (within the meaning of Part III of the 1990 Act) if, and only if, in every calendar month—

- (a) at least 80 per cent. of so much of the national service as consists of programmes, consists of programmes which are also included in the digital service in that month, and
- (b) at least 50 per cent. of so much of the national service as consists of such programmes is broadcast at the same time on both services.

(4) The Secretary of State may by order amend subsection (3)(a) or (b) by substituting for the percentage for the time being specified there a different percentage specified in the order.

(5) Before making an order under subsection (4) the Secretary of State shall consult such persons appearing to him to represent listeners as he thinks fit.

(6) An order under subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) In subsection (3) “programme” does not include an advertisement.

### *General provisions about licences*

## **42 Licences under Part II**

- (1) Any licence granted by the Radio Authority (in this Part referred to as “the Authority”) 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) The Authority—
- (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 44(1) or (2)(b) or (c).
- (3) The Authority 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 Authority about the variation.
- (4) Paragraph (a) of subsection (3) does not affect the operation of section 59(1)(b); and that subsection shall not authorise the variation of any condition included in a licence in pursuance of section 55(1).
- (5) 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 Authority.
- (6) Without prejudice to the generality of subsection (5), the Authority 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.
- (7) 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.

## **43 General licence conditions**

- (1) A licence may include—
- (a) such conditions as appear to the Authority 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;
  - (b) conditions enabling the Authority to supervise and enforce technical standards in connection with the provision of the licensed service;

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- (c) conditions requiring the payment by the licence holder to the Authority (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;
  - (d) conditions requiring the licence holder to furnish the Authority, 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 this Act;
  - (e) conditions requiring the licence holder, if found by the Authority to be in breach of any condition of his licence, to reimburse to the Authority, in such circumstances as are specified in any conditions, any costs reasonably incurred by them in connection with the breach of that condition;
  - (f) conditions providing for such incidental and supplemental matters as appear to the Authority to be appropriate.
- (2) A licence may in particular include—
- (a) conditions requiring the licence holder—
    - (i) to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified, or
    - (ii) (except to the extent that the Authority 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; and
  - (b) conditions requiring the licence holder to permit—
    - (i) any employee of, or person authorised by, the Authority, or
    - (ii) any officer of, or person authorised by, the Secretary of State,
 to enter any premises which are used in connection with the broadcasting of the licensed service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.
- (3) The fees required to be paid to the Authority by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by the Authority; 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 Authority to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Authority regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 8 to the 1990 Act.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Authority 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 Authority with any information, and
  - (b) in purported compliance with that condition provides them with any information which is false in a material particular,
- he shall be taken for the purposes of sections 59, 62 and 66 of this Act and section 111 of the 1990 Act to have failed to comply with that condition.
- (6) Nothing in this Act 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).

#### **44 Restrictions on holding of licences under Part II**

- (1) The Authority 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 Authority may accordingly—
  - (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 Authority—
  - (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 Authority 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 Authority 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,

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the Authority 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 Authority shall not serve any such notice on the licence holder unless—
- (a) the Authority 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
    - (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 reduction in the total number of points, calculated in accordance with paragraph 9 of Part III of Schedule 2 to the 1990 Act, attributable to all the services referred to in paragraph 8(1) or (2)(a) or (b) of that Part of that Schedule,
  - (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 Authority 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.

#### *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

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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.
- (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—

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- (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,
    - (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



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- (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—
  - (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.

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- (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 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.
- (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.

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- (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,
  - (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).

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- (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 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

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(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—

- (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),
  - (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

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- 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



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- (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
  - (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

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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), 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
  - (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

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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
    - (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).

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- (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).
- (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.

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- (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—
- (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).

### *Digital sound programme services*

## **60 Licensing of digital sound programme services**

- (1) For the purposes of this Part a digital sound programme service is—
  - (a) a “national digital sound programme service” if it is provided for broadcasting by means of a national radio multiplex service, and
  - (b) a “local digital sound programme service” if it is provided for broadcasting by means of a local radio multiplex service.
- (2) A licence to provide digital sound programme services (in this Part referred to as a “digital sound programme licence”) may be either—
  - (a) a licence to provide national digital sound programme services (in this Part referred to as a “national digital sound programme licence”), or
  - (b) a licence to provide local digital sound programme services (in this Part referred to as a “local digital sound programme licence”).
- (3) An application for a digital sound programme licence shall—
  - (a) be made in such manner as the Authority may determine, and
  - (b) be accompanied by such fee (if any) as they may determine.
- (4) At any time after receiving such an application and before determining it, the Authority may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (5) 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.
- (6) Where an application for a digital sound programme licence is made to the Authority in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 42(2)(a) or 44(1).
- (7) Subject to subsection (8), section 90 of the 1990 Act (general provisions relating to services licensed under Part III of that Act) shall apply in relation to a digital sound programme service licensed under this Part of this Act as it applies in relation to a national or local service (within the meaning of Part III of the 1990 Act).
- (8) In its application in relation to a digital sound programme service licensed under this Part, section 90 of the 1990 Act shall have effect with the omission of subsection (7) and with the substitution for subsections (3) and (4) of the following—

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- “(3) The appropriate requirement referred to in subsection (2)(a) is—
- (a) in the case of a national digital sound programme service, that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
  - (b) in the case of a local digital sound programme service, that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on such matters.
- (4) In applying subsection (3)(a) to a national digital sound programme service a series of programmes may be considered as a whole; and in applying subsection (3)(b) to a local digital sound programme service the programmes included in that service shall be taken as a whole.”
- (9) Subject to subsection (10), sections 91 to 96 of the 1990 Act (general provisions relating to services licensed under Part III of that Act) shall apply in relation to a digital sound programme service licensed under this Part as they apply in relation to a licensed service (within the meaning of Part III of the 1990 Act).
- (10) In its application in relation to a digital sound programme service, section 96(1)(b) shall have effect as if the reference to the Authority’s functions under Chapter II of Part III of the 1990 Act included a reference to their functions under this Part.

## **61 Duration and conditions of digital sound programme licence**

- (1) Subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 62(10), a digital sound programme licence shall continue in force until it is surrendered by its holder.
- (2) A digital sound programme licence shall include such conditions as appear to the Authority to be appropriate for requiring the holder of the licence—
- (a) on entering into any agreement with the holder of a radio multiplex licence for the provision of a digital sound programme service to be broadcast by means of a radio multiplex service, to notify the Authority—
    - (i) of the identity of the radio multiplex service,
    - (ii) of the characteristics of the digital sound programme service to which the agreement relates, and
    - (iii) of the period during which it will be provided,
  - (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 Authority of the variation so far as relating to those matters, and
  - (c) where he is providing a digital sound programme service to the holder of a radio multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Authority of that fact.
- (3) A digital sound programme licence shall also include such conditions as appear to the Authority to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in subsection (2)(a), to submit to the Authority 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.



- (4) Where the holder of a digital sound programme licence has submitted proposals to the Authority in accordance with a condition included in the licence by virtue of subsection (3) or has failed to comply with such a condition, the Authority 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.

## **62 Enforcement of digital sound programme licences**

- (1) If the Authority are satisfied that the holder of a digital sound programme 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—
- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Authority,
  - (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, and
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a national digital sound programme licence shall not exceed whichever is the greater of—
- (a) £50,000, and
  - (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 sound 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 national radio multiplex services in respect of relevant accounting periods (as determined in accordance with section 57), 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) “relevant accounting period”, in relation to a national radio multiplex service, means the last accounting period of the holder of the national radio multiplex licence.
- (5) Where, in the case of any national radio multiplex service, the first accounting period of the holder of the national radio multiplex licence throughout which the holder of the digital sound programme licence provides a digital sound programme service for broadcasting by means of the radio 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 sound programme licence in relation to that radio multiplex service for the relevant accounting period shall be taken to be the amount which the Authority estimate to be the share of multiplex revenue attributable to him for the first period.
- (6) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a local digital sound programme licence shall not exceed £50,000.

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- (7) 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.
- (8) 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.
- (9) 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.
- (10) Subject to subsections (11) and (12), section 109 (power to require scripts etc. or broadcasting of correction or apology or not to repeat programme) and section 111 (power to revoke licences) of the 1990 Act shall apply in relation to a digital sound programme licence as they apply in relation to a licence under Chapter II of Part III of the 1990 Act.
- (11) In its application in relation to a digital sound programme licence, section 109(1) of the 1990 Act shall have effect with the substitution for the reference to a direction under Part III of that Act of a reference to a direction under this Part.
- (12) In its application in relation to a digital sound programme licence, section 111 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part III 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).
- (13) It is hereby declared that any exercise by the Authority of their powers under subsection (1) in respect of any failure to comply with any condition of a digital sound programme licence shall not preclude any exercise by the Authority of their powers under section 109 of the 1990 Act in respect of that failure.

*Digital additional services provided on sound broadcasting frequencies*

### **63 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 radio multiplex service, whether by him or by some other person, but
  - (b) is not a digital sound programme service, a simulcast radio 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 sound programme licence or by an independent national broadcaster and consists in the provision of any service (other than advertising) which—
- (a) is ancillary to programmes included in a digital sound programme service or simulcast radio service provided by him and is directly related to their contents, or

- (b) relates 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 sound 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.

#### **64 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 Authority 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 Authority 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 Authority 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 Authority in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 42(2)(a) or 44(1).

#### **65 Duration and conditions of digital additional services licence**

- (1) Subject to the provisions of this Part and to section 111 of the 1990 Act as applied by section 66(10), 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 Authority to be appropriate for requiring the holder of the licence—
  - (a) on entering into any agreement with the holder of a radio multiplex licence for the provision of digital additional services to be broadcast by means of a radio multiplex service, to notify the Authority—
    - (i) of the identity of the radio multiplex service,
    - (ii) of the period during which the services will be provided, and
    - (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 Authority of the variation so far as relating to those matters, and
  - (c) where he is providing digital additional services to the holder of a radio multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Authority of that fact.

## 66 Enforcement of digital additional services licences

- (1) If the Authority 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 Authority 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 Authority,
  - (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, or
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) Subject to subsection (4), the amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a digital additional services licence shall not exceed whichever is the greater of—
  - (a) £50,000, and
  - (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 national radio multiplex services in respect of relevant accounting periods (as determined in accordance with section 57), and
  - (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) Where the holder of a digital additional services licence has not provided any digital additional services for broadcasting by means of a national radio multiplex service, the amount of any penalty imposed on him under subsection (1)(a) shall not exceed £50,000.
- (5) In subsection (3) “relevant accounting period”, in relation to a national radio multiplex service, means the last accounting period of the holder of the national radio multiplex licence.
- (6) Where, in the case of any national radio multiplex service, the first accounting period of the holder of the national radio multiplex licence throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting by means of the radio 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 radio multiplex service for the relevant accounting period shall be taken to be the amount which the Authority estimate to be the share of multiplex revenue attributable to him for the first period.
- (7) 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.
- (8) 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

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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.

- (9) 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.
- (10) Subject to subsections (11) and (12), section 109 (power to require scripts etc. or broadcasting of correction or apology or not to repeat programme) and section 111 (power to revoke licences) of the 1990 Act shall apply in relation to a digital additional services licence as they apply in relation to a licence under Chapter II of Part III of the 1990 Act.
- (11) In its application in relation to a digital additional services licence, section 109(1) of the 1990 Act shall have effect with the substitution for the reference to a direction under Part III of that Act of a reference to a direction under this Part.
- (12) In its application in relation to a digital additional services licence, section 111 of the 1990 Act shall have effect—
  - (a) with the substitution for the reference in subsection (1)(a) to Part III 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).
- (13) It is hereby declared that any exercise by the Authority 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 any exercise by the Authority of their powers under section 109 of the 1990 Act in respect of that failure.

#### *Miscellaneous and supplemental*

### **67 Review of digital radio broadcasting**

- (1) For the purpose of considering for how long it would be appropriate for sound 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 radio multiplex services,
    - (ii) the availability in the United Kingdom of digital sound programme services and the availability there in digital form of national services (within the meaning of Part III of the 1990 Act) and the sound 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 national radio multiplex licence is granted under section 47, and at such time or times thereafter as he thinks fit, require the Authority and the BBC to report to him on the matters referred to in paragraph (a).

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- (2) If the Authority 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 this subsection (1)(b), the Authority shall consult—
- (a) the holders of all radio multiplex licences,
  - (b) the holders of digital sound programme licences who are providing digital sound programme services which are being broadcast, and
  - (c) such other persons providing services licensed by the Authority under this Part or Part III of the 1990 Act as the Authority think fit,
- and the Authority 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 listeners 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 listeners of any sound broadcasting service ceasing to be broadcast in analogue form.
- (5) In this section “sound broadcasting service” has the same meaning as in Part III of the 1990 Act.

## **68 Promotion of equal opportunities and fair treatment**

- (1) Any national radio multiplex licence or national digital sound 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.

## **69 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—
- section 53(5)(a) and (b)(i);
  - section 59(2)(a) and (4);
  - section 62(2)(a) and (6); and
  - section 66(2)(a) and (4).

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

## **70 Computation of multiplex revenue**

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

## **71 Certain receipts of Authority to be paid into Consolidated Fund**

- (1) Where the Authority receive in respect of any licence any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Authority but shall—
- (a) if the licence is for the provision of a service for any area or locality 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 or locality 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 Authority consider appropriate or into both of those Funds in such proportions as the Authority consider appropriate.
- (2) The amounts referred to in subsection (1) are amounts payable by virtue of any of the following provisions—
- section 53(5);
  - section 55(1);
  - section 59(1);
  - section 62(1);
  - section 66(1).
- (3) Subsection (1) shall not be construed as applying to any amount which is required by the Authority for the making of an adjustment in respect of an overpayment made by any person.
- (4) Any amount payable by any person to the Authority 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 any licence 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 Authority 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.

## 72 Interpretation of Part II

- (1) In this Part (unless the context otherwise requires)—
- “ancillary service” has the meaning given by section 63(2);
  - “the Authority” means the Radio Authority;
  - “digital additional service” has the meaning given by section 63(1), and “digital additional services licence” means a licence to provide such services;
  - “digital sound programme service” has the meaning given by section 40(5), and “digital sound programme licence” means a licence to provide such services;
  - “independent national broadcaster” has the meaning given by section 41(1);
  - “licence” means a licence under this Part, and “licensed” shall be construed accordingly;
  - “local digital sound programme service” and “national digital sound programme service” shall be construed in accordance with section 60(1) and “local digital sound programme licence” and “national digital sound programme licence” mean a licence to provide local digital sound programme services and a licence to provide national digital sound programme services respectively;
  - “local radio multiplex service” and “national radio multiplex service” shall be construed in accordance with section 40(4), and “local radio multiplex licence” and “national radio multiplex licence” mean a licence to provide a local radio multiplex service and a licence to provide a national radio multiplex service respectively;
  - “radio multiplex service” has the meaning given by section 40(1);
  - “simulcast radio service” has the meaning given by section 41(2);
  - “technical service” has the meaning given by section 63(3).
- (2) Any reference in this Part to an area in the United Kingdom does not include an area which comprises or includes the whole of England; and nothing in this Part shall be read as precluding a local radio multiplex service from being provided for an area or locality that is to any extent comprised in the area or locality for which another local radio multiplex service is to be provided.
- (3) 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.