



# Broadcasting Act 1990

## 1990 CHAPTER 42

### <sup>F1</sup>PART I

#### INDEPENDENT TELEVISION SERVICES

### CHAPTER II

#### TELEVISION BROADCASTING ON CHANNELS 3, 4 AND 5

##### *Enforcement of licences*

#### **40 Power to direct licensee to broadcast correction or [<sup>F1</sup>a statement of findings] or not to repeat programme.**

(1) If [<sup>F2</sup>OFCOM] are satisfied—

- (a) that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence, and
- (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or [<sup>F1</sup>a statement of findings] (or both) under this subsection,

they may (subject to subsection (2)) direct the licence holder to include in the licensed service a correction or [<sup>F1</sup>a statement of findings] (or both) in such form, and at such time or times, as they may determine.

(2) [<sup>F2</sup>OFCOM] shall not give any person a direction under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(3) Where the holder of a licence includes a correction or [<sup>F1</sup>a statement of findings] in the licensed service in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.

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- (4) If [<sup>F2</sup>OFCOM] are satisfied that the inclusion by the holder of a Channel 3 or Channel 5 licence of any programme in the licensed service involved a failure by him to comply with any condition of the licence, they may direct him not to include that programme in that service on any future occasion.
- (5) This section shall apply in relation to Channel 4 as if any reference to a Channel 3 licence were a reference to the licence to provide Channel 4.
- [<sup>F3</sup>(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.]

#### Textual Amendments

- F1** Words in s. 40 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 344\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F2** Words in ss. 40–42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 18\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F3** S. 40(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 344\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C1** Pt. I: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 3\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- C2** S. 40 applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 8\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- C3** S. 40(1)–(4) applied (1.10.1996) by [1996 c. 55, s. 23\(8\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- C4** S. 40(1)–(4) applied (1.10.1996) by [1996 c. 55, s. 27\(8\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- C4** [S. 40\(1\)](#) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 2\(a\)](#) (with art. 5)

## 41 Power to impose financial penalty or shorten licence period.

- (1) If [<sup>F2</sup>OFCOM] are satisfied that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence or with any direction given by [<sup>F2</sup>OFCOM] under or by virtue of any provision of this Part [<sup>F4</sup>, Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003], 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 [<sup>F2</sup>OFCOM]; or
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- [<sup>F5</sup>(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) (a) shall not exceed 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").
- (1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be

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construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.]

(3) [F2OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(4) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [F2OFCOM] 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.

(5) It is hereby declared that any exercise by [F2OFCOM] of their powers under subsection (1) of this section in respect of any failure to comply with any condition of a licence shall not preclude any exercise by them of their powers under section 40 in respect of that failure.

(6) This section shall apply in relation to Channel 4 as if—

- (a) any reference to a Channel 3 licence were a reference to the licence to provide Channel 4; and
- (b) subsection (1)(b) were omitted.

#### Textual Amendments

- F2** Words in ss. 40–42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 18(1)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F4** Words in s. 41(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 18(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F5** S. 41(1A)–(1C) substituted for s. 41(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 3\(1\)\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C5** [S. 41\(1\)](#) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, **Sch. para. 3(a)** (with art. 5)

## 42 Power to revoke Channel 3 or 5 licence.

(1) If [F2OFCOM] are satisfied—

- (a) that the holder of a Channel 3 or Channel 5 licence is failing to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part [F6, Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003], and
- (b) that that failure is such that, if not remedied, it would justify the revocation of the licence,

they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).

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- (2) A notice under this subsection is a notice—
- (a) stating that [F2OFCOM] are satisfied as mentioned in subsection (1);
  - (b) specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and
  - (c) stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, [F2OFCOM] will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) [F2OFCOM] are satisfied—
- (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,
- they shall (subject to subsection (8)) serve on that person a notice revoking his licence.
- (4) If [F2OFCOM] are satisfied in the case of any Channel 3 or Channel 5 licence—
- (a) that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and
  - (b) that it is appropriate for them to do so,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (5) If [F2OFCOM] are satisfied—
- (a) that the holder of a Channel 3 or Channel 5 licence provided them, in connection with his application for the licence, with information which was false in a material particular, or
  - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,
- they may (subject to subsection (8)) serve on him a notice revoking his licence.
- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.
- (7) If it appears to [F2OFCOM] to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.
- (8) [F2OFCOM] shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

#### Textual Amendments

- F2** Words in ss. 40-42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 18\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F6** Words in s. 42(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 18\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C6** S. 42 modified (1.10.1996) by [1996 c. 55](#), [s. 4\(5\)\(6\)](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120](#), art. 4, [Sch. 1](#)
- C7** S. 42 extended (with modifications) (1.10.1996) by [1996 c. 55](#), [s. 17\(6\)](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120](#), art. 4, [Sch. 1](#)

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- C8** S. 42 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 23(8)(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**  
S. 42 applied (with modifications) (1.10.1996) by 1996 c. 55, s. 27(8)(9) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**  
S. 42 applied (1.10.1996) by 1996 c. 55, s. 27(8) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**
- C9** S. 42 applied (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 10 para. 11** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C10** S. 42(1) modified (20.7.2004) by The Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004 (S.I. 2004/1975), art. 1, **Sch. para. 3(b)** (with art. 5)

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