



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

#### CHAPTER I

##### REGULATION BY AUTHORITY OF INDEPENDENT RADIO SERVICES GENERALLY

##### *General provisions about licences*

#### **86 Licences under Part III.**

- (1) A licence shall be in writing and (subject to the provisions of this Part) shall continue in force [<sup>F1</sup>(subject to a suspension of the licence under section 111B)—
  - (a) in the case of a licence to provide radio licensable content services, until such time as it is surrendered or is revoked in accordance with any of the following provisions of this Part; and
  - (b) in any other case, until whichever is the earlier of any such time or the end of the period specified in the licence.]
- (2) A licence may be granted by [<sup>F2</sup>OFCOM] for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified; and (without prejudice to the generality of the preceding provision) a licence may be so granted for the provision of a service which to any extent consists in the simultaneous broadcasting of different programmes on different frequencies.
- [<sup>F3</sup>(3) A licence to provide a local or national service or to provide an additional service must specify a period of no more than twelve years as the period for which it is to be in force.]
- (4) [<sup>F2</sup>OFCOM] —

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- (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 88(1) or (2)(b) or (c) or 89(1).

[<sup>F4</sup>(4A) Where [<sup>F2</sup>OFCOM] are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.]

- (5) [<sup>F2</sup>OFCOM] 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 the licence 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 [<sup>F2</sup>OFCOM] about the variation.
- (6) Paragraph (a) of subsection (5) does not affect the operation of [<sup>F5</sup>section 97B [<sup>F6</sup>, 105A] or 110(1)(b)]; and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 102(1) or section 118(1).
- (7) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of [<sup>F2</sup>OFCOM] .
- (8) Without prejudice to the generality of subsection (7), [<sup>F2</sup>OFCOM] 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.
- [<sup>F7</sup>(9) The holding of a licence by a person shall not relieve him of—
  - (a) any liability in respect of a failure to hold [<sup>F8</sup>a licence under section 8 of the Wireless Telegraphy Act 2006]; or
  - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).]

#### Textual Amendments

- F1** Words in s. 86(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 252(1)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with **art. 11**)
- F2** Words in s. 86 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 33(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with **art. 11**)
- F3** S. 86(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 252(2)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with **art. 11**)
- F4** S. 86(4A) inserted (24.7.1996) by [1996 c. 55](#), s. 136, 149(1)(f), **Sch. 8 para. 5** (with s. 43(1)(6))
- F5** Words in s. 86(6) substituted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 30(1)**, 47(2)(b)
- F6** Words in s. 86(6) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 33(1)**, 47(1)
- F7** S. 86(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 33(3)** (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with **art. 11**)
- F8** Words in s. 86(9)(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 7 para. 11**

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

- C1** Pt. III: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 5](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### 87 General licence conditions.

#### (1) A licence may include—

- (a) such conditions as appear to [<sup>F9</sup>OFCOM] to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act [<sup>F10</sup>, the Broadcasting Act 1996 or the Communications Act 2003];
- (b) conditions enabling [<sup>F9</sup>OFCOM] to supervise and enforce technical standards in connection with the provision of the licensed service;
- (c) conditions requiring the payment by the licence holder to [<sup>F9</sup>OFCOM] (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 [<sup>F9</sup>OFCOM], 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 [<sup>F11</sup>, the Broadcasting Act 1996 or the Communications Act 2003];
- (e) conditions requiring the licence holder, if found by [<sup>F9</sup>OFCOM] to be in breach of any condition of his licence, to reimburse to [<sup>F9</sup>OFCOM], 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 [<sup>F9</sup>OFCOM] to be appropriate.

#### (2) A licence may in particular include—

- (a) conditions requiring the licence holder—
  - (i) to comply with any direction given by [<sup>F9</sup>OFCOM] as to such matters as are specified in the licence or are of a description so specified, or
  - (ii) (except to the extent that [<sup>F9</sup>OFCOM] 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, [<sup>F9</sup>OFCOM], <sup>F12</sup>...
  - <sup>F12</sup>(ii) .....  
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 [<sup>F9</sup>OFCOM] by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by [<sup>F9</sup>OFCOM]; <sup>F13</sup>...

#### (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and [<sup>F9</sup>OFCOM] shall publish every such tariff in such manner as they consider appropriate.

#### (5) Where the holder of any licence—

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- (a) is required by virtue of any condition imposed under this Part to provide [F<sup>9</sup>OFCOM] 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 110 and 111 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).

#### Textual Amendments

- F9** Words in s. 87 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 34\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F10** Words in s. 87(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 34\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F11** Words in s. 87(1)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 34\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F12** S. 87(2)(b)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 34\(4\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F13** Words in s. 87(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 34\(5\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- C2** S. 87(1)(d) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), arts. 1, [10\(1\)\(a\)\(2\)](#) (a) (with art. 5)

## 88 Restrictions on the holding of licences.

- (1) [F<sup>14</sup>OFCOM] 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 this Act; and
  - [F<sup>15</sup>(b)] that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) [F<sup>14</sup>OFCOM] 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;

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- (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;
- [<sup>F16</sup>(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
  - (i) shareholdings in the body; or
  - (ii) the directors of the body;
- (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
  - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
  - (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.

[<sup>F17</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, [<sup>F14</sup>OFCOM] shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]

(3) Where [<sup>F14</sup>OFCOM] —

  - (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 [<sup>F14</sup>OFCOM] 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 [<sup>F14</sup>OFCOM] 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,

[<sup>F14</sup>OFCOM] 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.

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- [<sup>F18</sup>(6) The Commission shall not serve any such notice on the licence holder unless—
- (a) the Commission have notified him of the matters [<sup>F19</sup>constituting their grounds for revoking the licence] 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 (6A)—
    - (i) they have also given him an opportunity of complying with [<sup>F20</sup>the requirements imposed by or under Schedule 14 to the Communications Act 2003] within a period specified in the notification, and
    - (ii) the period specified in the notification has elapsed.
- (6A) A relevant change falls within this subsection if it consists only in one or more of the following—
- <sup>F21</sup>(a) .....
  - (b) a change in the national market share (within the meaning of [<sup>F22</sup>Part 1 of Schedule 14 to the Communications Act 2003]) of one or more national newspapers (within the meaning of that Part of that Schedule);
  - (c) a change in the local market share (within the meaning of [<sup>F23</sup>section 5]) in a particular area of one or more local newspapers (within the meaning of [<sup>F24</sup>Part 1 of Schedule 14 to the Communications Act 2003]).
- <sup>F25</sup>(6B)] .....
- [<sup>F26</sup>(6C) [<sup>F14</sup>OFCOM] shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.
- (6D) Where [<sup>F14</sup>OFCOM] receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.]
- (7) 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, or
  - (b) any change in the persons having control over or interests in the body, [<sup>F27</sup>or
  - (c) any other change giving rise to [<sup>F28</sup>a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,]]
- being [<sup>F29</sup>(in any case)] a change which is such that, if it fell to [<sup>F14</sup>OFCOM] 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.

#### Textual Amendments

- F14** Words in s. 88 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 35\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F15** S. 88(1)(b)(c) substituted for s. 88(1)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 350\(2\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F16** S. 88(2)(da)(db) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 35\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F17** S. 88(2A) inserted (24.7.1996) by [1996 c. 55](#), s. 136, [Sch. 8 para. 6\(2\)](#) (with s. 43(1)(6))
- F18** S. 88: subsections (6)(6A)(6B) substituted for subsection (6) (1.11.1996) by [1996 c. 55](#), s. 73, [Sch. 2 Pt. V para. 13\(2\)](#); [S.I. 1996/2120](#), art. 5, [Sch. 2](#)

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- F19** Words in s. 88(6)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F20** Words in s. 88(6)(b)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F21** S. 88(6A)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(5\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F22** Words in s. 88(6A)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F23** Words in s. 88(6A)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 12\(a\)](#)
- F24** Words in s. 88(6A)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 12\(b\)](#)
- F25** S. 88(6B) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(6\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F26** S. 88(6C)(6D) inserted (24.7.1996) by [1996 c. 55, s. 136, Sch. 8 para. 6\(3\)](#) (with s. 43(1)(6))
- F27** S. 88(7)(c) and the word “or” immediately preceding it inserted (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 13\(3\)\(a\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)
- F28** Words in s. 88(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(7\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F29** Words in s. 88(7) substituted (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 13\(3\)\(b\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)

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

- C3** S. 88 modified (temp.) (17.7.2003) by [The Communications Act 2003 \(Commencement No. 1\) Order 2003 \(S.I. 2003/1900\), art. 5](#)
- C4** S. 88(1) modified (1.11.1996) by [1996 c. 55, s. 143\(3\)\(4\)\(6\)\(b\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)
- C5** S. 88(1)(a) amended (1.11.1996) by [1996 c. 55, s. 145\(7\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 5, Sch. 2](#)

## 89 Disqualification for holding licence on grounds of conviction for transmitting offence.

(1) Subject to subsection (2), a person shall be disqualified for holding a licence under this Part if within the last five years he has been convicted of—

[<sup>F30</sup>(a) an offence under section 35 of the Wireless Telegraphy Act 2006 (unauthorised use etc of wireless telegraphy station or apparatus) consisting in the establishment or use of a wireless telegraphy station, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of Part 5 of that Act);]

[<sup>F30</sup>(aa) an offence under section 36 of that Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 8 of that Act would constitute an offence falling within paragraph (a);]

[<sup>F30</sup>(ab) an offence under section 37 or 38 of that Act (unlawful broadcasting offences);]

[<sup>F30</sup>(b) an offence under Part 5 of that Act (prohibition of broadcasting from sea or air); or]

(c) an offence under section 97 below.

<sup>F31</sup>(2) .....



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- (3) Every licence granted under this Part shall include conditions requiring the holder of the licence to do all that he can to ensure that no person who is disqualified for holding a licence by virtue of subsection (1) is <sup>F32</sup>concerned in—
- (a) the provision of the licensed service or the making of programmes included in it; or
  - (b) the operation of [<sup>F33</sup>a wireless telegraphy station] used for broadcasting the service.]

#### Textual Amendments

- F30** S. 89(1)(a)(aa)(ab)(b) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 12\(2\)](#)
- F31** S. 89(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F32** Words in s. 89(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 36\(3\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F33** Words in s. 89(3)(b) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 12\(3\)](#)



**Changes to legislation:**

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