



Broadcasting Act 1990

1990 CHAPTER 42

PART III

INDEPENDENT RADIO SERVICES

CHAPTER II

SOUND BROADCASTING SERVICES

National services

98 Applications for national licences.

- (1) Where [^{F1}OFCOM] propose to grant a licence to provide a national 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—
 - (i) the period for which the licence is to be granted,
 - (ii) the minimum area of the United Kingdom for which the service is to be provided,
 - [^{F2}(ia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;]
 - (iii) if the service is to be one falling within section 85(2)(a)(i) or (ii), that the service is to be such a service, and
 - (iv) if there is any existing licensed national service, that the service is to be one which caters for tastes and interests different from those already catered for by any such service (as described in the notice);
 - (c) inviting applications for the licence and specifying the closing date for such applications; and
 - (d) specifying—

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- (i) the fee payable on any application made in pursuance of the notice, and
 - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 102(1)(c) if he were granted the licence.
- (2) In determining the minimum area of the United Kingdom for which a national service is to be provided [^{F1}OFCOM] shall have regard to the following considerations, namely—
 - (a) that the service in question should, so far as is reasonably practicable, make the most effective use of the frequency or frequencies on which it is to be provided; but
 - (b) that the area for which it is to be provided should not be so extensive that the costs of providing it would be likely to affect the ability of the person providing the service to maintain it.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
 - (a) the applicant's proposals for providing a service that would ^{F3}...—
 - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), ^{F4}...
 - ^{F4}(ii)
 - [^{F5}(aa) the applicant's proposals (if any) for providing a simulcast radio service corresponding to the service;]
 - (b) the fee specified in the notice under subsection (1)(d)(i);
 - (c) the applicant's 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 proposed service;
 - (d) the applicant's cash bid in respect of the licence;
 - (e) such information as [^{F1}OFCOM] may reasonably require—
 - (i) 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
 - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
 - (f) such other information as [^{F1}OFCOM] may reasonably require for the purpose of considering the application.
- [^{F6}(3A) For the purposes of subsection (1)(d)(ii)—
 - (a) different percentages may be specified for different accounting periods; and
 - (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (4) At any time after receiving such an application and before determining it [^{F1}OFCOM] may require the applicant to furnish additional information under any of paragraphs (a), [^{F7}(aa),] (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to [^{F1}OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.

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- (6) [F¹OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
 - (b) the proposals submitted by him under subsection (3)(a) [F⁸ and (aa)]; and
 - (c) such other information connected with his application as [F¹OFCOM] consider appropriate.
- (7) In this section
- [F⁹“national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996; and]
- “programme” does not include an advertisement.
- (8) In this Part “cash bid”, in relation to a licence, means an offer to pay to [F¹OFCOM] a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

Textual Amendments

- F1** Words in s. 98 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F2** S. 98(1)(b)(ia) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F3** Word in s. 98(3)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(3\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F4** S. 98(3)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(3\)\(b\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F5** S. 98(3)(aa) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F6** S. 98(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F7** Word in s. 98(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F8** Words in s. 98(6)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F9** Words in s. 98(7) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(4\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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)

99 Procedure to be followed by Authority in connection with consideration of applications for national licences.

- (1) Where a person has made an application for a national licence in accordance with section 98, [F¹⁰OFCOM] shall not proceed to consider whether to award him the

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licence on the basis of his cash bid in accordance with section 100 unless it appears to them—

- (a) that his proposed service would ^{F11}...—
 - (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, ^{F12}...
 - ^{F12}(ii)
- (b) that he would be able to maintain that service [^{F13}and any proposed simulcast radio service corresponding to that service] throughout the period for which the licence would be in force.

- (2) Any reference to an applicant in section 100 (except in section 100(9)(b)) is accordingly a reference to an applicant in whose case it appears to [^{F10}OFCOM] that the requirements of subsection (1)(a) and (b) above are satisfied.

Textual Amendments

- F10** Words in s. 99 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F11** Word in s. 99(1)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(3\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F12** S. 99(1)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(3\)\(b\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F13** Words in s. 99(1)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

100 Award of national licence to person submitting highest cash bid.

- (1) Subject to the following provisions of this section, [^{F14}OFCOM] shall, after considering all the cash bids submitted by the applicants for a national licence, award the licence to the applicant who submitted the highest bid.
- [^{F15}(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a “simulcast applicant”), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—
 - (a) disregard the requirement imposed by subsection (1); and
 - (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.
- (2) Where—
 - (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
 - (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,
 OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.

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- (2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—
- (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
 - (b) they propose to exercise their power under subsection (3).
- (2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).
- (2C) In this Part references to a person's cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.]
- (3) [F14OFCOM] may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to [F14OFCOM], in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (4) If it appears to [F14OFCOM], in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
- (a) they shall refer his application to the Secretary of State, together with—
 - (i) a copy of all documents submitted to them by the applicant, and
 - (ii) a summary of their deliberations on the application; and
 - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (5) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (6) In subsections (4) and (5) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
- (a) paying any amounts payable by him by virtue of section 102(1), or
 - (b) otherwise financing the provision of his proposed service.
- (7) Where [F14OFCOM] are, by virtue of subsection (4), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (11)) have effect as if that person had not made an application for the licence.
- (8) Where [F14OFCOM] have awarded a national licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (9) in such manner as they consider appropriate; and

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- (b) grant the licence to that person.
- (9) The matters referred to in subsection (8)(a) are—
 - (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
 - (b) the name of every other applicant in whose case it appeared to [F14OFCOM] that the requirement specified in section 99(1)(a) was satisfied;
 - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, [F14OFCOM]'s reasons for the licence having been so awarded; and
 - (d) such other information as [F14OFCOM] consider appropriate.
- (10) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (9) shall have effect as if—
 - (a) paragraph (b) were omitted; and
 - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (11) Subsections (1) to (6) shall not have effect as mentioned in subsection (7) if [F14OFCOM] decide that it would be desirable to publish a fresh notice under section 98 in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if [F14OFCOM] decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a further licence to provide the service in question.

Textual Amendments

- F14** Words in s. 100 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 40](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F15** S. 100(1A)-(2C) substituted for s. 100(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 257\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

[F16]100A Licence conditions relating to simulcast radio services

Where OFCOM award a national licence to a person whose application for that licence included proposals to provide a simulcast radio service, that licence must include a condition requiring the licence holder—

- (a) to provide, from a date specified in the licence, a simulcast radio service corresponding to the licensed service; and
- (b) to do all that he can to secure the broadcasting of that service.]

Textual Amendments

- F16** S. 100A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 257\(6\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

(1) If at any time after a national licence has been granted to any person but before the licence has come into force—

- (a) that person indicates to [^{F17}OFCOM] that he does not intend to provide [^{F18}the licensed national service or that he does not intend to provide a corresponding simulcast radio service that he is required to provide by a condition imposed under section 100A], or
- (b) [^{F17}OFCOM] for any other reason have reasonable grounds for believing that that person will not provide [^{F19}the licensed national service or any such simulcast radio service] once the licence has come into force,

then, subject to subsection (2)—

- (i) [^{F17}OFCOM] shall serve on him a notice revoking the licence as from the time the notice is served on him, and
- (ii) section 100 shall (subject to section 100(11)) have effect as if he had not made an application for the licence.

(2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless [^{F17}OFCOM] have served on him a notice stating their grounds for believing that he will not provide [^{F20}the licensed national service or the simulcast radio service] 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 [^{F17}OFCOM] revoke a national 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, [^{F21}a specified financial penalty].

[^{F22}(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).

(3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(3C) In any other case, the maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

(3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.]

(5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 122(4), be recoverable by [^{F17}OFCOM] as a debt due to them from any person who controls that body.

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Textual Amendments

- F17** Words in s. 101 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F18** Words in s. 101(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F19** Words in s. 101(1)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F20** Words in s. 101(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F21** Words in s. 101(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F22** S. 101(3A)-(3D) substituted for s. 101(4) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

Modifications etc. (not altering text)

- C2** S. 101(3) modified (1.11.1996) by [1996 c. 55, s. 145\(6\)\(b\)](#) (with [s. 43\(1\)\(6\)](#)); [S.I. 1996/2120, art. 5, Sch. 2](#)
- C3** S. 101(3B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- C4** S. 101(3C)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

102 Additional payments to be made in respect of national licences.

- (1) A national licence shall include conditions requiring the licence holder to pay to [^{F23}OFCOM] (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
 - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
 - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 98(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
- (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
 - (b) in respect of charges made in that period for the reception of programmes included in that service.
- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—

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- (a) the licence holder or any connected person, and
 - (b) a person acting as an advertising agent,

the amount of any receipt by the licence holder 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 (5), be the amount of the payment by the advertiser after the deduction of the commission.
- (5) If the amount deducted by way of commission as mentioned in subsection (4) 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.
- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A national licence may include conditions—
 - (a) enabling [F23OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—
 - (a) authorising [F23OFCOM] 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.
- (9) Where—
 - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“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)(c) 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.
- (10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—
 - (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
 - (b) the retail prices index for the month of November in the year preceding the relevant year;

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and for this purpose “the retail prices index” means the general index of prices (for all items) published by the [^{F24}Statistics Board].

Textual Amendments

- F23** Words in s. 102 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 42](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F24** Words in s. 102(10) substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 6\(3\)](#); [S.I. 2008/839](#), art. 2

103 Restriction on changes in control over holder of national licence.

(1) Where—

- (a) any change in the persons having control over—
 - (i) a body to which a national licence has been awarded or transferred in accordance with this Part of this Act, or
 - (ii) an associated programme provider,
 takes place within the relevant period, and
- (b) that change takes place without having been previously approved for the purposes of this section by [^{F25}OFCOM],

then (subject to subsection (5)) [^{F25}OFCOM] may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.

(2) In subsection (1)—

“associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and [^{F26}is or is likely to be involved, to a substantial extent, in the provision of the programmes included] in the licensed service; and

“the relevant period”, in relation to a national licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;

and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection [^{F27}as it has effect for the purposes of that Schedule.]

- (3) [^{F25}OFCOM] shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 98(3)(a) by that body (or, as the case may be, by the person to whom the licence was originally awarded).
- (4) [^{F25}OFCOM] may refuse so to approve any such change if, in any circumstances not falling within subsection (3), they consider it appropriate to do so.
- (5) [^{F25}OFCOM] shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.

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- (6) Where under subsection (1) [^{F25}OFCOM] refuse to grant a licence to any body, section 100 shall (subject to section 100(11)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 111 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

Textual Amendments

- F25** Words in s. 103 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F26** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F27** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

Modifications etc. (not altering text)

- C5** S. 103 applied (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 18 para. 44\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

[^{F28}103A] **Renewal of national licences.**

- (1) A national licence may (subject to the following provisions of this section) be renewed [^{F29}under this section] on one occasion for a period of [^{F30}twelve] years beginning with the date of renewal.
- (2) An application for the renewal of a national licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than [^{F31}the day falling three months before] the relevant date.
- (3) Where any such application is made ^{F32}...—
- ^{F33}(a)
- (b) ^{F34}..., [^{F35}OFCOM] may postpone the consideration of the application for so long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a national licence has been duly made to [^{F35}OFCOM], they shall (subject to subsection (5)) grant the application if, but only if—
- (a) [^{F35}OFCOM] are satisfied that the applicant would, if his licence were renewed, provide a national service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section),
- [^{F36}(b) the applicant gave notice to OFCOM, within the period of one month beginning with the commencement of section 42 of the Broadcasting Act 1996, of his intention to provide a simulcast radio service, and]
- (c) a simulcast radio service provided by the applicant is being broadcast in digital form or [^{F35}OFCOM] are satisfied that by the relevant date the applicant has done all that it would in the circumstances be reasonable to expect him to do by that date to procure the broadcasting of such a service within such time as [^{F35}OFCOM] consider reasonable.

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- (5) Section 100(4) to (6) shall apply in relation to an applicant for the renewal of a national licence as those provisions apply in relation to such an applicant as is mentioned in section 100(4), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any application under this section [F35OFCOM] —
- (a) may, in a case where a simulcast radio service provided by the applicant is not yet being broadcast in digital form on the relevant date, determine a date by which the broadcasting of such a service in that form must begin;
 - (b) shall determine an amount which is to be payable to [F35OFCOM] by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
 - (c) may specify a different percentage from that specified under section 98(1)(d) (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 102(1)(c) during the period for which the licence is to be renewed.
- [F37(7) The amount determined under subsection (6)(b) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 98.
- (7A) For the purposes of subsection (6)(c)—
- (a) different percentages may be specified for different accounting periods; and
 - (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (8) Where [F35OFCOM] have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable ^{F38} ..., as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (6)(a),
 - (b) the amount determined by them under subsection (6)(b), and
 - (c) any percentage specified by them under subsection (6)(c),
- 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.
- (9) Where a national licence has been renewed under this section—
- (a) any conditions included in it in pursuance of section 102 shall have effect during the period for which the licence has been renewed—
 - (i) as if the amount determined by [F35OFCOM] under subsection (6) (b) were an amount specified in a cash bid submitted by the licence holder, and
 - (ii) subject to any determination made under subsection (6)(c);
 - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a national licence is originally in force;
 - (c) where [F35OFCOM] have determined a date under subsection (6)(a), they shall include in the licence as renewed a condition requiring a simulcast radio service to be broadcast in digital form throughout the period beginning with

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- the date determined under subsection (6)(a) and ending with the date on which the licence (as renewed) is to expire; and
- (d) the reference in section 111(4) to the end of the period for which a national licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.

^{F39}(10)

[In the case of a pre-transfer national licence (including one for a period extended under ^{F40}(10A) section 253 of the Communications Act 2003)—

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a national licence granted by OFCOM under this Part after the radio transfer date.]

(11) In this section—

^{F41}
...

“the relevant date”, in relation to a national licence, means the date which [^{F35}OFCOM] determine to be that by which they would need to publish a notice under section 98(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the national service formerly provided under that licence.]

[^{F42}(12) A determination for the purposes of subsection (11)—

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.]

Textual Amendments

- F28** S. 103A inserted (24.7.1996) by 1996 c. 55, ss. 92, 149(e) (with s. 43(1)(6))
- F29** Words in s. 103A(1) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), ss. 31(1), 47(2)(b)
- F30** Word in s. 103A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(3) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F31** Words in s. 103A(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(4) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F32** Words in s. 103A(3) 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)
- F33** S. 103A(3)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), Sch. 19(1) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F34** Words in s. 103A(3)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), Sch. 19(1) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F35** Words in s. 103A substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F36** S. 103A(4)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(6) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F37** S. 103A(7)(7A) substituted for s. 103A(7) (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(7) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F38** Words in s. 103A(8) 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)
- F39** S. 103A(10) 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)

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- F40** S. 103A(10A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 44\(8\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F41** Words in s. 103A(11) 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)
- F42** S. 103A(12) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 44\(9\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

Modifications etc. (not altering text)

- C6** S. 103A(2) modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 50\(3\)–\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C7** S. 103A(12) restricted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 50\(1\),\(2\)\(b\),\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

^{F43}**103B Further renewal of national licences**

- (1) A national licence may be renewed under this section on [^{F44}three occasions] for a period of not more than 7 years [^{F45}(on the [^{F46}first occasion),] 5 years (on the second occasion)][^{F47}or 10 years (on the third occasion)] beginning with the date of renewal (“the renewal period”) (subject to the following provisions of this section).
- (2) Subsections (2) to (9), (11) and (12) of section 103A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 103A, subject to [^{F48}subsections (3) and (3A)].
- (3) Those provisions apply in relation to the renewal of a licence under this section as if the following were omitted—
 - (a) subsection (4)(b),
 - (b) in subsection (4)(c), the words from “or OFCOM” to the end,
 - (c) subsection (6)(a),
 - (d) subsection (8)(a), and
 - (e) subsection (9)(c).

[Section 103A(12) (as applied) does not prevent the determination of a date falling less ^{F49}(3A) than one year after the making of the determination where—

- (a) the renewal of the licence in question would be the third renewal under this section,
- (b) OFCOM consider that the relevant date for the purposes of section 103A (as applied) is a date which is not more than 15 months after the day on which this subsection comes into force, and
- (c) the determination is made as soon as practicable after that day.]
- (4) Where OFCOM renew a licence under this section they must include in the licence as renewed a condition requiring the licence holder to do all that the licence holder can to secure the broadcasting of a simulcast radio service in digital form throughout the renewal period.]

Textual Amendments

- F43** S. 103B inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 31\(2\)](#), [47\(2\)\(b\)](#) (with [s. 31\(3\)](#))
- F44** Words in s. 103B(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, [3\(a\)\(i\)](#)

Changes to legislation: There are currently no known outstanding effects for the
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- F45** Words in s. 103B(1) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **2(b)**
- F46** Words in s. 103B(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(a)(ii)**
- F47** Words in s. 103B(1) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(a)(iii)**
- F48** Words in s. 103B(2) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(b)**
- F49** S. 103B(3A) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(c)**

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