



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART IV

#### TRANSFER OF UNDERTAKINGS OF IBA AND CABLE AUTHORITY

##### *Transitional arrangements*

#### **129 Transitional arrangements relating to IBA's broadcasting services.**

- (1) Schedule 11 to this Act shall have effect—
- (a) with respect to the provision by the Commission and the Welsh Authority, during the period beginning with the transfer date and ending with 31st December 1992, of television broadcasting services which have been provided by the IBA under the <sup>M1</sup>Broadcasting Act 1981 down to the transfer date;
  - (b) for the purpose of the regulation by the Commission after the end of that period of services provided in succession to the DBS services provided by them during that period; and
  - (c) in the case of local sound broadcasting services which have been provided by the IBA down to the transfer date—
    - (i) with respect to the provision of such services on and after that date by the Radio Authority, and
    - (ii) for the purpose of the regulation by that Authority on and after that date of services provided in succession to such services.
- (2) The programmes provided by a programme contractor under his contract for inclusion in any broadcasting service provided by the Commission or the Radio Authority in accordance with Part II or IV of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission or the Radio Authority (as the case may be) but shall be transmitted—
- (a) by the nominated company in pursuance of a contract made between that company and the programme contractor in accordance with section 130, or
  - (b) under arrangements made in accordance with subsection (3)(a) of that section in a case where any such contract made between a DBS programme contractor

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and that company is terminated by the contractor as mentioned in that provision.

- (3) The programmes broadcast on Channel 4 and S4C respectively during the interim period in accordance with Part II of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission but shall be transmitted by the nominated company—
- (a) in the case of the programmes broadcast on Channel 4, in pursuance of such a contract made between that company and the Channel 4 company as is mentioned in subsection (4), and
  - (b) in the case of the programmes broadcast on S4C, in pursuance of such a contract made between the nominated company and the Welsh Authority as is mentioned in subsection (6).
- (4) The contract referred to in subsection (3)(a) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on Channel 4 during that period, and in particular makes provision—
- (a) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company; and
  - (b) for the transmission of those programmes to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify.
- (5) The circumstances referred to in subsection (4)(b) are circumstances where the Commission consider it necessary to require the transmission of the programmes in question to be suspended in order for them to comply, or secure compliance, with the provisions of the <sup>M2</sup>Broadcasting Act 1981 (as it has effect in accordance with Part II of Schedule 11 to this Act) or with any restriction or requirement imposed thereunder.
- (6) The contract referred to in subsection (3)(b) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on S4C during that period, and in particular makes provision for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company.
- (7) In the following provisions, namely—
- (a) Parts II and IV of Schedule 11 to this Act, and
  - (b) any provision of the <sup>M3</sup>Broadcasting Act 1981 which is to be construed as referring to the Commission or to the Radio Authority by virtue of either of those Parts of that Schedule,
- any reference (however expressed) to the broadcasting of programmes, or to programmes broadcast, by the Commission or the Radio Authority shall, in consequence of subsections (2) and (3) above, be read as a reference to the broadcasting of programmes, or to programmes broadcast, by that body whether the transmission of the programmes is undertaken (according to the circumstances of the case)—
- (i) by, or under arrangements made by, that body, or
    - (ii) by the nominated company in pursuance of any such contract as is referred to in either of those subsections, or
    - (iii) under any such arrangements as are referred to in subsection (2)(b);

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and those Parts of that Schedule contain other modifications of provisions of that Act which are consequential on those subsections.

- (8) This section and section 130 shall have effect in relation to any teletext service provided by the Commission in accordance with Part II of Schedule 11 as if—
- (a) any reference to a programme or television programme were a reference to a teletext transmission; and
  - (b) any reference to a programme contractor were a reference to a teletext contractor.
- (9) This section and section 130 shall, in so far as they apply to the transmission of the programmes provided by a DBS programme contractor under his contract for inclusion in any DBS service provided by the Commission in accordance with Part II of Schedule 11, be construed as applying only to the carrying on of such activities in connection with the transmission of those programmes as were being so carried on by the IBA immediately before the transfer date.
- (10) In this section—
- “the Channel 4 company” means the body corporate referred to in section 12(2) of the Broadcasting Act 1981, and “on Channel 4” means in the additional broadcasting service referred to in section 10(1) of that Act, but excluding so much of that service as consisted, immediately before the transfer date, in the broadcasting of programmes for reception wholly or mainly in Wales;
  - “the interim period” means the period specified in subsection (1)(a) above;
  - “on S4C” has the same meaning as in Part I of this Act.
- (11) The reference in subsection (4) or (6) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date.

#### Marginal Citations

- M1 1981 c. 68.
- M2 1981 c. 68.
- M3 1981 c. 68.

### **130 Variation of programme contracts to take account of new transmission arrangements.**

- (1) Subject to subsections (2) and (4), it shall be the duty of the IBA to make before the transfer date such variations of each contract between them and a programme contractor (“the programme contract”) as appear to them to be appropriate—
- (a) for requiring the programme contractor to enter into a contract with the nominated company which makes provision for and in connection with the transmission by that company during the interim period of the programmes which the programme contractor has the right and the duty to provide under the programme contract, and in particular makes provision—
    - (i) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company,

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- (ii) for the transmission of those programmes to be suspended, if the relevant authority so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify, and
  - (iii) where the programme contractor is a TV programme contractor, for the consideration payable in respect of the transmission of those programmes to be payable in accordance with subsection (6); and
  - (b) for securing that the right and the duty of the programme contractor under the programme contract to provide those programmes is accordingly (so long as any such contract with the nominated company remains in force) a right and a duty to provide them for transmission by that company.
- (2) Subsection (1) shall apply to a contract for the provision of television programmes for broadcasting in a DBS service (“a DBS programme contract”) as if—
- (a) the reference to coverage in paragraph (a)(i) were omitted; and
  - (b) for paragraph (a)(iii) there were substituted—
    - “(iii) for the programme contractor to be entitled to terminate the contract if he is notified by the Commission that they are satisfied that the standards referred to in sub-paragraph (i) are not being attained as mentioned in that sub-paragraph;”.
- (3) The IBA shall, in the case of any DBS programme contract, make before the transfer date such variations of the contract as appear to them to be appropriate—
- (a) for requiring the DBS programme contractor, if he terminates his contract with the nominated company under any provision included in the contract in consequence of subsection (2)(b), to make such arrangements as the Commission may approve for and in connection with the transmission during the interim period of the programmes which he has the right and the duty to provide under the DBS programme contract, being arrangements under which—
    - (i) specified standards relating to technical quality and reliability are to be attained in connection with the transmission of those programmes under the arrangements, and
    - (ii) the transmission of those programmes is to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify; and
  - (b) for securing that the right and the duty of the programme contractor under the DBS programme contract to provide those programmes is accordingly (so long as any such arrangements remain in force) a right and a duty to provide them for transmission under the arrangements.
- (4) Subsection (1) shall apply to a contract for the provision of local sound broadcasts as if the reference to the interim period were a reference to the remainder of the period for which the contract continues in force by virtue of paragraph 2(1) in Part IV of Schedule 11; and that subsection accordingly does not apply to any such contract if—
- (a) the programme contractor notifies the IBA, before such date as they shall determine, that he proposes to request the Radio Authority to determine the contract as from the transfer date in accordance with paragraph 1(1) in Part V of that Schedule; or

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- (b) the contract is one to which paragraph 2(1) in that Part of that Schedule would apply on the transfer date.
- (5) The circumstances referred to in paragraph (a)(ii) of subsection (1) or (3) are circumstances where the relevant authority or (as the case may be) the Commission consider it necessary to require the transmission of the programmes in question to be suspended—
- (a) in order for them to comply, or secure compliance, with the provisions of the <sup>M4</sup>Broadcasting Act 1981 (as it has effect in accordance with Schedule 11 to this Act) or with any restriction or requirement imposed thereunder, or
- (b) in view of any matter which they consider constitutes or would constitute a breach of the programme contractor’s contract.
- (6) The IBA shall make before the transfer date such variations of each contract between them and a TV programme contractor as appear to them to be appropriate for requiring the programme contractor to enter into an agreement with all of the other TV programme contractors which—
- (a) relates to the payment by those contractors to the nominated company of the consideration payable by them in respect of the transmission by that company of the programmes provided by them; and
- (b) provides for the amounts payable by each of the contractors to be such proportion of the total consideration so payable as corresponds to the proportion of the relevant amount which he was liable to pay by virtue of section 32(1)(a) of the Broadcasting Act 1981 (rental payments) in respect of the period beginning with 1st April 1990 and ending with the transfer date; and in paragraph (b) “the relevant amount” means the aggregate amount of all payments falling to be made by TV programme contractors by virtue of section 32(1)(a) of that Act in respect of that period (excluding any payments falling to be so made in consequence of section 13(2) of that Act (advertisements on Channel 4)).
- (7) The IBA shall, in the case of each such contract as is mentioned in subsection (6), also make before the transfer date such variations of the contract as appear to them to be appropriate in consequence of section 129(3).
- (8) In this section—
- “the interim period” means the period specified in section 129(1)(a);
- “the relevant authority”—
- (a) in relation to any such contract as is mentioned in subsection (1)(a) which relates to the transmission of television programmes, means the Commission, and
- (b) in relation to any such contract which relates to the transmission of local sound broadcasts, means the Radio Authority;
- and section 129(8) and (9) apply for the purposes of this section.
- (9) Any reference in subsection (1) or (3) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date; and different standards may be so specified for the purposes of subsection (1) in relation to programme contractors of different descriptions.

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**Marginal Citations**

**M4** 1981 c. 68.

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**131 Supplementary provisions relating to variation of programme contracts.**

- (1) Where the IBA make any variation of a programme contract in pursuance of section 130(1) to (4) or (6), they may make such variations of that contract of a supplemental, incidental, consequential or transitional nature as they consider appropriate.
- (2) The relevant authority may on or after the transfer date make any variation of a programme contract which could have been made before that date by the IBA—
  - (a) in pursuance of section 130(1) to (4), or
  - (b) in pursuance of subsection (1) above in connection with any variation made in pursuance of section 130(1) to (4);
 and any such variation may be made with retrospective effect as from that date.
- (3) Before making any variation of a programme contract in pursuance of any provision of section 130, this section or Schedule 11, the IBA or (as the case may be) the relevant authority shall consult the programme contractor concerned.
- (4) Any such variation shall be made by means of a notice served on that programme contractor.
- (5) In this section—
  - “programme contract” means a contract between the IBA and a programme contractor;
  - “programme contractor” includes a teletext contractor;
  - “the relevant authority”—
    - (a) in relation to a programme contract for the provision of television programmes or teletext transmissions, means the Commission; and
    - (b) in relation to a programme contract for the provision of local sound broadcasts, means the Radio Authority.

**132 Disposal by IBA of DBS transmitting equipment etc.**

- (1) The IBA shall have power, with the approval of the Secretary of State—
  - (a) to dispose of any relevant assets to a DBS contractor; and
  - (b) to do so on such terms and for such consideration as they may determine (whether or not any such consideration represents the market value of the assets).
- (2) Any disposal under subsection (1) shall take effect on the transfer date.
- (3) In this section “relevant asset” means any equipment or other asset (of whatever description) which has been used or held by the IBA in connection with the transmission of DBS services.

**133 Functions exercisable by IBA before transfer date in connection with local sound broadcasting.**

- (1) It shall be the duty of the IBA to prepare before the transfer date, in the case of each relevant programme contractor, a contract which—
  - (a) is expressed to be made between the nominated company and the contractor; and

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- (b) is to come into force in accordance with subsection (3) at such time (if any) as the contractor becomes the holder of a local licence by virtue of paragraph 1(1) in Part V of Schedule 11 to this Act; and
  - (c) makes provision in connection with the transmission, as from any such time, of the programmes included in the local service provided by the contractor (as the holder of such a licence), which may include provision for the transmission of those programmes by the nominated company.
- (2) For the purposes of subsection (1) the IBA shall, after consultation with all the relevant programme contractors, draw up a number of different standard forms of contract, and each contract prepared by them under that subsection shall be in such one of those forms as they may determine after consultation with the relevant programme contractor concerned.
- (3) Any contract prepared under subsection (1) shall by virtue of this subsection come into force, as a contract between the nominated company and the relevant programme contractor concerned, at any such time as is mentioned in paragraph (b) of that subsection and (subject to the provisions of the contract) shall continue in force for such period as is specified in it, being a period expiring not later than 31st December 1994.
- (4) If—
  - (a) any contract prepared under subsection (1) has not yet come into force, and
  - (b) the nominated company and the relevant programme contractor concerned agree that it would be more appropriate for them to be parties to a contract which is in one of the other forms of contract drawn up as mentioned in subsection (2), and
  - (c) the nominated company prepares such a contract as is mentioned in subsection (1) which is in that other form,subsection (3) shall have effect in relation to that contract as if it had been prepared by the IBA under subsection (1) (and accordingly shall not have effect in relation to the contract referred to in paragraph (a) above).
- (5) The IBA shall be deemed to have had power to impose such requirements as have been imposed by them on the various local sound programme contractors with respect to the making of payments to the IBA for the purpose of enabling reductions to be made in relevant charges; and in this subsection “relevant charges” means charges made by the nominated company in connection with the transmission, during the period beginning with the transfer date and ending with 31st December 1994, of programmes which are included in local services falling within any description of such services determined by the IBA.
- (6) The IBA shall have power, with the approval of the Secretary of State—
  - (a) to dispose of, or of an interest in, any relevant assets to a relevant programme contractor; and
  - (b) to do so on such terms and for such consideration as they may determine (whether or not any such consideration represents the market value of the assets).
- (7) In this section—
  - “local licence” and “local service” have the same meaning as in Part III of this Act;

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“local sound programme contractor” means a person who is a programme contractor by virtue of a contract for the provision of local sound broadcasts;

“relevant asset” means any equipment or other asset (of whatever description) which has been used or held by the IBA in connection with the transmission of local sound broadcasts;

“relevant programme contractor” means the programme contractor under a contract which, if effective immediately before the transfer date, would be a contract to which paragraph 2(1) in Part IV of Schedule 11 applied.

**<sup>F1</sup>134 Transitional arrangements relating to existing cable services.**

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**Textual Amendments**

**F1** S. 134 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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