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*Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Part II. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 11

#### TRANSITIONAL PROVISIONS RELATING TO IBA'S BROADCASTING SERVICES

##### PART II

##### TELEVISION BROADCASTING SERVICES TO BE PROVIDED BY COMMISSION

*IBA's television broadcasting services to be provided by Commission during interim period*

- 1 (1) During the period beginning with the transfer date and ending with 31st December 1992 (referred to in this Schedule as “the interim period”) the following television broadcasting services, namely—
- (a) ITV,
  - (b) Channel 4,
  - (c) any teletext service provided by the IBA down to the transfer date, and
  - (d) any DBS services so provided,
- shall be provided by the Commission in accordance with this Part of this Schedule.
- (2) The services provided by the Commission as mentioned in sub-paragraph (1) shall be of high quality both as to the transmission and as to the matter transmitted and (subject to paragraph 3(1) below) shall be provided by the Commission for so much of the United Kingdom as may from time to time be reasonably practicable.
- (3) During the interim period the following provisions of the 1981 Act, namely—
- (a) section 2(2),
  - (b) sections 3 to 9,
  - (c) sections 14(3) and 15,
  - (d) sections 28 and 29, and
  - (e) Schedule 2,
- shall (subject to the provisions of this Part of this Schedule) have effect in connection with the provision of those services by the Commission as they had effect, immediately before the transfer date, in connection with the provision of those services by the IBA.
- (4) The provisions specified in sub-paragraph (3) above shall have effect in accordance with that sub-paragraph with the following general modifications, namely—
- (a) any reference to the IBA shall (subject to paragraph (b) and sub-paragraph (8) below) be construed as a reference to the Commission; and
  - (b) any reference to any of the broadcasting stations used by the IBA shall be construed as a reference to any of the broadcasting stations used in the provision of any of the services provided by the Commission as mentioned in sub-paragraph (1) above.

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- (5) Section 3(2)(b) of the 1981 Act shall have effect in accordance with sub-paragraph (3) above with the substitution of the following sub-paragraph for sub-paragraph (ii)—

“(ii) by reason of the termination of any contract with a programme contractor;” and.

- (6) Section 8 of the 1981 Act shall have effect in accordance with sub-paragraph (3) above with the omission of subsections (6) to (9) of that section; but (except in the case of any programme to which the Commission determine that the following prohibition is not to apply) none of the broadcasting services provided by the Commission as mentioned in sub-paragraph (1) above shall include a programme which is sponsored by any person whose business consists, wholly or mainly—

- (a) in the manufacture or supply of a product, or
- (b) in the provision of a service,

the advertising of which in any such broadcasting service is prohibited by virtue of any provision of that Act (as applied by this paragraph) or of the code under section 9 of that Act (as so applied).

- (7) Section 9 of the 1981 Act shall have effect in accordance with sub-paragraph (3) above as if—

- (a) in subsection (1)(a), after “standards and practice in advertising” there were inserted “ and in the sponsoring of programmes ”;
- (b) in subsection (1)(b), there were inserted at the end “ and as regards the sponsoring of programmes so broadcast ”; and
- (c) after “methods of advertising” (wherever occurring) there were inserted “ or sponsorship ”;

and the Commission may give effect to paragraph (a) above by making modifications to the code in force under section 9 immediately before the transfer date.

- (8) Section 29(5) of the 1981 Act shall have effect in accordance with sub-paragraph (3) above as if the reference to requiring the IBA by notice in writing to do, or not to do, anything mentioned in that provision were a reference to requiring the Commission by notice in writing to direct any programme contractor specified in the notice—

- (a) to do, or not to do, that thing, or
- (b) (if the context so requires) to secure that that thing is or is not done.

- (9) Without prejudice to the generality of sub-paragraph (5) of paragraph 2 below, the Commission may make such variations of a contract to which sub-paragraph (1) of that paragraph applies as appear to them to be appropriate for facilitating or ensuring compliance with any direction or notice given to or served on them under section 28 or 29 of the 1981 Act (as applied by this paragraph).

*General provisions about programme contracts and programme contractors*

- 2 (1) Sections 2(3) and 14(2) of the 1981 Act shall have effect in relation to the Commission and the programmes and teletext transmissions broadcast by them in the services provided by them as mentioned in paragraph 1(1) above as they had effect immediately before the transfer date in relation to the IBA and the programmes and teletext transmissions broadcast by them in the services mentioned in paragraph 1(1); and where a contract between the IBA and a programme contractor or a teletext contractor is effective immediately before that date—

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- (a) the contract shall continue to have effect on and after that date (subject to and in accordance with this Part of this Schedule) as a contract between the Commission and that contractor and any other party to it, and
- (b) any reference in the contract to the IBA shall accordingly be construed, in relation to any time falling on or after that date, as a reference to the Commission.

(2) During the interim period the following provisions of the 1981 Act, namely—

- (a) sections 19(1) to (2B) and 20(2) to (9),
- (b) sections 21 to 25,
- (c) sections 32 to 35, and
- (d) Schedule 4,

shall have effect in relation to any contract to which sub-paragraph (1) applies, or (as the case may be) in relation to the programme contractor or teletext contractor under any such contract, subject to the modifications specified in sub-paragraph (3) and subject also to paragraphs 4 and 5 below.

(3) The modifications of the provisions specified in sub-paragraph (2) are as follows—

- (a) any reference in those provisions to the IBA shall (subject to paragraphs (b) and (c) below) be construed as a reference to the Commission;
- (b) sections 21 and 23 shall have effect as if any reference to the IBA's obligation to transmit the programmes supplied by a programme contractor were a reference to the right and the duty of the programme contractor under his contract to provide programmes for broadcasting in one of the services provided by the Commission as mentioned in paragraph 1(1) above;
- (c) section 22 shall have effect as if any reference to the programmes, or television programmes, supplied to the IBA were a reference to the programmes, or television programmes, supplied for broadcasting in one of those services; and
- (d) section 32(1)(a) shall have effect as if—
  - (i) for “the branch” there were substituted “ the part ”, and
  - (ii) for “section 36(2) in relation to that branch” there were substituted “ paragraph 12(1) of Schedule 1 to the Broadcasting Act 1990 in relation to that part ”.

(4) The Commission shall do all that they can to secure that during the interim period no person who is, or is an associate of, a TV programme contractor—

- (a) holds any local licence, or
- (b) controls any body which holds any such licence, or
- (c) is a participant with more than a 20 per cent. interest in a body corporate which holds any such licence,

in a case where the area or locality for which the licensed service is to be provided is to a significant extent the same as the area for which television programmes are to be provided under the TV programme contractor's contract; and this sub-paragraph shall be construed in accordance with Part I of Schedule 2 to this Act.

(5) The Commission may make such variations of a contract to which sub-paragraph (1) applies as appear to them to be appropriate in consequence of any of the provisions of this Part of this Schedule.

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*Provisions relating to Channel 4*

- 3 (1) Channel 4 shall be provided by the Commission during the interim period for so much of England, Scotland and Northern Ireland as may from time to time be reasonably practicable.
- (2) The programmes (other than advertisements) broadcast by the Commission on Channel 4 shall (without prejudice to section 12(2) of the 1981 Act, as applied by this paragraph) be provided by the Commission.
- (3) In consequence of sub-paragraph (2), sections 3(2) and 6 of the 1981 Act (as applied by paragraph 1 above) do not apply in the case of Channel 4.
- (4) Subject to the modifications specified in sub-paragraph (5), sections 11 to 13 of the 1981 Act shall have effect in connection with the provision of Channel 4 by the Commission during the interim period as they had effect immediately before the transfer date in connection with the provision of that service by the IBA.
- (5) The modifications of the provisions specified in sub-paragraph (4) are as follows—
- (a) any reference in those provisions to the IBA shall (subject to paragraph (c) below) be construed as a reference to the Commission;
  - (b) section 12(1) shall have effect as if for the reference to paragraph 4(1) of Schedule 1 to the 1981 Act there were substituted a reference to paragraph 1(3) of Schedule 1 to this Act;
  - (c) section 12(2) shall have effect as if for the reference to a subsidiary of the IBA formed by them for the purpose there were substituted a reference to a subsidiary of the Commission (being the body corporate formed by the IBA in pursuance of that provision); and
  - (d) in section 13, subsection (4) shall (in consequence of paragraph 1(6) above) have effect with the omission of paragraph (c).

*Provisions relating to teletext services*

- 4 (1) For the purposes of—
- (a) this Part of this Schedule, and
  - (b) the provisions of the 1981 Act which have effect in accordance with this Part of this Schedule,
- teletext transmissions shall not be treated as programmes; but this is subject to sub-paragraph (2) and to any of those provisions of the 1981 Act which expressly requires such transmissions to be so treated for the purposes of any particular provision.
- (2) In paragraphs 1(8) and 2(3)(b) above and 10 below and in the provisions specified in Part I of Schedule 3 to the 1981 Act (as they have effect in accordance with this Part of this Schedule)—
- (a) references to programmes or to television programmes shall be read as including references to teletext transmissions; and
  - (b) references to programme contractors shall be read as including references to teletext contractors.
- (3) In section 3(2) of the 1981 Act, in its application to teletext transmissions or teletext contractors by virtue of sub-paragraph (2), the reference to section 2(3) of that Act shall be read as a reference to section 14(2) of that Act (as it has effect by virtue of paragraph 2(1) above).

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- (4) The following provisions of the 1981 Act, namely—
- (a) section 20(2)(b) and (3), and
  - (b) section 22,
- shall not have effect by virtue of paragraph 2(2) above in relation to teletext contractors or their contracts.

*Provisions relating to DBS services*

- 5 (1) The following provisions of the 1981 Act, namely—
- (a) in section 2(2), paragraph (c) and in paragraph (b) the words “and a proper balance and wide range in their subject matter”,
  - (b) in section 4(1), paragraph (d) and so much of paragraph (b) as relates to the giving of a sufficient amount of time in the programmes to news and news features,
  - (c) section 20(2)(b) and (3),
  - (d) section 22, and
  - (e) section 24,
- shall not have effect by virtue of paragraph 1(3) or 2(2) above in connection with the provision of DBS services by the Commission or (as the case may be) in relation to DBS contractors or their contracts.
- (2) Every contract between the Commission and a DBS programme contractor shall contain all such provisions as the Commission think necessary or expedient to ensure that the financial and other arrangements for the provision of the satellite transponder are made by the contractor.
- (3) For the purpose of enabling a DBS programme or teletext contractor to make charges for the reception of programmes provided by him or transmissions containing material so provided, the Commission may, notwithstanding anything in the 1981 Act as it has effect in accordance with this Part of this Schedule, broadcast the programmes or transmissions in such a form (whether scrambled, encoded or otherwise) as will prevent persons from receiving them unless they obtain from the contractor the means of doing so.
- (4) Where under the power conferred by sub-paragraph (3) the Commission broadcast programmes or transmissions in such a form as is mentioned in that sub-paragraph, nothing in the 1981 Act (as it so has effect) shall be taken as requiring the Commission to permit advertisements to be included in the programmes or transmissions.
- (5) Where any service falling within section 46(1) of this Act is provided during the interim period on any of the spare capacity within the frequencies on which any DBS services are provided by the Commission in accordance with this Part of this Schedule, that service is licensable under section 47 of this Act as a licensable programme service, and not otherwise.

*General provisions relating to S4C*

- 6 (1) Subject to the provisions of this paragraph and paragraph 7 below, S4C shall be provided during the interim period by the Welsh Authority in accordance with Chapter VI of Part I of this Act.

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- (2) During that period—
  - (a) any reference in section 57(3) or 58(2) or (4) of this Act to Channel 4 shall be construed as a reference to the Channel 4 service provided by the Commission in accordance with paragraph 1 above; and
  - (b) the reference in section 58(2) to the Channel Four Television Corporation shall be construed as a reference to the Commission.
- (3) So much of section 4(1)(d) of the 1981 Act (as applied by paragraph 1 above) as relates to cases where another language as well as English is in common use among persons served by the station or stations in question, shall, in the case of programmes broadcast by the Commission on ITV for reception wholly or mainly in Wales, apply only to languages other than Welsh.

*Broadcasting of advertisements on S4C*

- 7 (1) During the interim period the programmes broadcast by the Welsh Authority on S4C for reception in the area of any TV programme contractor may, so long as the provisions of the 1981 Act (as applied by this Part of this Schedule) are complied with in relation thereto, include advertisements provided for insertion therein by that contractor in consideration of payments to him.
- (2) Any such TV programme contractor shall have the right to provide advertisements for inclusion in the programmes broadcast on S4C for reception in his area so long as—
  - (a) he makes the required payments to the Commission, and
  - (b) the provisions of the 1981 Act (as applied by this Part of this Schedule) are complied with in relation to such advertisements.
- (3) In sub-paragraph (2) “the required payments” means such payments as are required to be paid by the programme contractor by virtue of any provision of his contract included in pursuance of section 13(2) of the 1981 Act.
- (4) For any period in which programmes are to be broadcast on S4C for reception in the area of a TV programme contractor it shall be the duty of the Welsh Authority to make suitable arrangements—
  - (a) for the contractor to receive advance information about the programmes other than advertisements which are to be so broadcast in that period and about the periods which will be available for the broadcasting of advertisements; and
  - (b) for the inclusion, in the programmes so broadcast in that period, of advertisements provided for the purpose by the contractor in the exercise of his right to do so under sub-paragraph (2).
- (5) No period allocated by the Welsh Authority to the broadcasting of advertisements on S4C shall be located—
  - (a) in any break in any programme supplied to them by the BBC; or
  - (b) without the consent of the BBC, at the beginning or end of any such programme.
- (6) Orders for the inclusion by a TV programme contractor of advertisements among those provided by him for insertion in the programmes broadcast on S4C may be received either through advertising or other agents or direct from the advertiser.

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- (7) During the interim period—
- (a) section 8(5) of the 1981 Act shall apply in relation to the programmes broadcast by the Welsh Authority on S4C as that provision applies, in accordance with this Part of this Schedule, in relation to the programmes broadcast by the Commission on ITV;
  - (b) the Commission shall do all that they can to secure that the provisions of—
    - (i) Schedule 2 to the 1981 Act (as it applies in accordance with this Part of this Schedule), and
    - (ii) the code under section 9 of that Act,
 are complied with in relation to the advertisements broadcast by the Welsh Authority on S4C and in relation to the sponsorship of programmes so broadcast;
  - (c) section 9(2) and (3) of that Act shall apply accordingly in relation to advertisements and other programmes so broadcast; and
  - (d) (except in the case of any programme to which the Welsh Authority determine that this paragraph is not to apply) S4C shall not contain any programme which is sponsored by any person whose business consists, wholly or mainly—
    - (i) in the manufacture or supply of a product, or
    - (ii) in the provision of a service,
 the advertising of which on ITV is prohibited by virtue of any provision of that Act or of the code under section 9 of that Act.
- (8) So long as any directions given under section 9(4) of the 1981 Act (whether by the IBA or by the Commission) remain in force, the Welsh Authority shall, in broadcasting advertisements on S4C, give effect to the provisions of the directions as if they were provisions regulating the times when advertisements are to be allowed to be broadcast on S4C.
- (9) Section 60(1) to (4) and (6) of this Act shall not have effect in relation to the Welsh Authority during the interim period.

*Financing of S4C during interim period*

- 8 (1) For each financial year, or part of a financial year, falling within the interim period the Commission shall (unless any payment has already been made in respect of it under section 39(1) of the 1981 Act) pay to the Welsh Authority—
- (a) such sum or sums as may be agreed between them to be appropriate for enabling the Welsh Authority to meet their reasonable outgoings, or
  - (b) in default of such agreement, such sum or sums as the Secretary of State may determine to be appropriate for that purpose.
- (2) For the purposes of section 32(1)(a) of the 1981 Act (as applied by paragraph 2 above) all sums paid by the Commission to the Welsh Authority in pursuance of subparagraph (1) above shall be treated as expenditure properly incurred in respect of the part of the Commission's undertaking which consists of the provision of television broadcasting services.
- (3) In deciding from time to time whether to make any, and if so what, use of his power under subsection (8) of section 32 of the 1981 Act (as so applied) to amend by order subsections (4) and (5) of that section the Secretary of State may have regard to

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any increase in the aggregate amount of the payments to be made under the head described in subsection (1)(a) of that section which is attributable to the provisions of sub-paragraph (1).

- (4) The provisions applied to the Welsh Authority by section 52(2) of the 1981 Act shall continue to apply to them on and after the transfer date in relation to any financial year ending before that date; and paragraphs 12 and 13 of Schedule 6 to this Act shall accordingly apply in relation to any subsequent financial year.

*Delivery of programmes by means of local delivery services*

- 9 Part II of this Act shall have effect as if section 72(2) of this Act included a reference to any television broadcasting service provided by the Commission in accordance with this Part of this Schedule.

*Provisions relating to Broadcasting Complaints Commission*

- 10 (1) Part V of this Act shall have effect as if—
- (a) section 143(2) of this Act included a reference to any television programme broadcast by the Commission during the interim period;
  - (b) (subject to sub-paragraph (2)) the Commission were—
    - (i) in relation to the provision by them of television broadcasting services in accordance with this Part of this Schedule, and
    - (ii) in relation to the broadcasting of advertisements on S4C during the interim period,
a broadcasting body within the meaning of that Part of this Act; and
  - (c) the Welsh Authority accordingly were not a broadcasting body within the meaning of that Part of this Act in relation to any such broadcasting of advertisements on S4C.
- (2) Sub-paragraph (1)(b) shall not have effect for the purposes of section 145(5) of this Act; and the Commission shall make such variations of any contract to which paragraph 2(1) above applies as appear to them to be appropriate—
- (a) for requiring the programme contractor under that contract—
    - (i) in the case of every programme provided by him which is broadcast by the Commission during the interim period, to retain a recording of that programme for the period of 90 days beginning with the broadcast,
    - (ii) if requested to do so by the Commission for the purpose of enabling them to comply with any requirement imposed on them in pursuance of section 145(4), 155(3) or 167(1) of this Act, to produce any such recording to them, and
    - (iii) if requested to do so by the Commission for the purpose of enabling them to comply with any requirement imposed on them in pursuance of section 145(4) or 155(3) of this Act, to produce to them any transcript of any such programme which he is able to produce to them; and
  - (b) for ensuring compliance by the programme contractor with any request to which section 145(7) of this Act applies which may be made to him by the BCC.



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- (3) For the financial year which includes the commencement of section 149 of this Act, and each subsequent financial year falling wholly or partly within the interim period, the Secretary of State shall notify to the Commission the sum which he considers to be the appropriate contribution by that body, in respect of the programme contractors under contracts to which paragraph 2(1) above applies, towards the expenses of the BCC; and the Commission shall pay to the Secretary of State any sum notified to them under this sub-paragraph.
- (4) Paragraph 2(1)(g)(i) of Schedule 13 to this Act shall have effect during the interim period as if the reference to the BBC or the Welsh Authority included a reference to the Commission.
- (5) In this paragraph “the BCC” means the Broadcasting Complaints Commission.

*Provisions relating to Broadcasting Standards Council*

- 11 Part VI of this Act shall have effect during the interim period as if—
  - (a) section 152(2) of this Act included a reference to any television programme broadcast by the Commission during that period;
  - (b) the Commission were—
    - (i) in relation to the provision by them of television broadcasting services in accordance with this Part of this Schedule, and
    - (ii) in relation to the broadcasting of advertisements on S4C during the interim period,
 a broadcasting body within the meaning of that Part of this Act; and
  - (c) the Welsh Authority accordingly were not a broadcasting body within the meaning of that Part of this Act in relation to any such broadcasting of advertisements on S4C.

*Supplementary provisions*

- 12 (1) Any code, notice, direction, approval or other thing drawn up, given or done by or in relation to the IBA—
  - (a) in pursuance of a provision of the 1981 Act which has effect during the interim period in accordance with this Part of this Schedule, and
  - (b) in connection with any of the IBA's television broadcasting services,
 shall, if in force or effective immediately before the transfer date, have effect as from that date for the relevant purposes as if drawn up, given or done by or in relation to the Commission.
- (2) Anything which immediately before that date was in the process of being done by or in relation to the IBA may, if it was being so done as mentioned in paragraphs (a) and (b) of sub-paragraph (1), be continued on or after that date by or in relation to the Commission.
- (3) Sections 61 and 62 of the 1981 Act shall have effect during the interim period for the relevant purposes as if any reference to the IBA were a reference to the Commission.
- (4) In this paragraph “the relevant purposes” means the purposes of the 1981 Act as it has effect during the interim period in accordance with this Part of this Schedule.

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