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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE INDEPENDENT TELEVISION COMMISSION: SUPPLEMENTARY PROVISIONS

##### *Status and capacity*

- 1 (1) The Commission shall be a body corporate.
- (2) The Commission shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the Commission as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including (subject to sub-paragraph (4)) the borrowing of money.
- (4) The power of the Commission to borrow money (otherwise than under paragraph 13) shall not be exercised by them except with the consent of, or in accordance with a general authority given by, the Secretary of State.

##### *Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Commission so long as he is—
  - (a) a governor or employee of the BBC;
  - (b) a member or employee of the Corporation;
  - (c) a member or employee of the Broadcasting Complaints Commission; or
  - (d) a member or employee of the Broadcasting Standards Council established by this Act.
- (2) The members of the Commission shall not at any time include more than one person who is either a member or an employee of the Welsh Authority.
- (3) Three out of the members of the Commission other than the chairman and deputy chairman shall be persons who appear to the Secretary of State to be suited to make the interests of Scotland, Wales and Northern Ireland, respectively, their special care.
- (4) Before appointing a person to be a member of the Commission, the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Commission; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the Commission that he has no such interest.
- (5) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the Commission shall, whenever requested by the Secretary of State to do

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so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (4).

*Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Commission shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Commission for more than five years at a time.
- (3) Any member of the Commission may at any time resign his office by notice in writing to the Secretary of State.

*Remuneration and pensions of members*

- 4 (1) The Commission may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The Commission may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

*Disqualification of members of Commission for  
House of Commons and Northern Ireland Assembly*

- 5 In Part II of Schedule 1 to the <sup>M1</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Independent Television Commission”; and a corresponding amendment shall be made in Part II of Schedule 1 to the

<sup>M2</sup>

Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M1** 1975 c. 24.

**M2** 1975 c. 25.

*Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Commission and the arrangements relating to their meetings shall be such as the Commission may determine.

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- (2) The arrangements may provide for the discharge, under the general direction of the Commission, of any of the Commission's functions by a committee or by one or more of the members or employees of the Commission.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Commission shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Commission, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Commission at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Commission by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Commission in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Commission include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Commission shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

#### *Employees of the Commission*

- 9 (1) The Commission shall appoint a secretary and may appoint such other employees as they may determine.
- (2) If the Commission determine to do so in the case of any of their employees, the Commission shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Commission may determine.
- (3) If any employee of the Commission—
- (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the Commission,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the Commission were service as an employee of the Commission.

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#### *Authentication of Commission's seal*

- 10 The application of the seal of the Commission shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### *Presumption of authenticity of documents issued by Commission*

- 11 Any document purporting to be an instrument issued by the Commission and to be duly executed under the seal of the Commission or to be signed on behalf of the Commission shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

#### *Finances of Commission*

- 12 (1) It shall be the duty of the Commission so to conduct their affairs as to secure that their revenues become at the earliest possible date, and continue thereafter, at least sufficient to enable them to meet their obligations and to discharge their functions under this Act.
- (2) Any excess of the Commission's revenues for any financial year over the sums required by them for that year for meeting their obligations and discharging their functions under this Act shall be applied by the Commission in such manner as the Secretary of State may direct with the approval of the Treasury and after consultation with the Commission.
- (3) A direction under sub-paragraph (2) may require the whole or any part of any excess of the revenues of the Commission to be paid into the Consolidated Fund.

#### *Advances to Commission*

- 13 (1) For the purpose of—
- (a) furnishing the Commission with working capital, or
  - (b) enabling them to meet any capital expenditure,
- the Secretary of State may, with the consent of the Treasury, make advances to the Commission out of money provided by Parliament.
- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Commission under this paragraph shall not at any time exceed £5 million.
- (3) Any sums advanced under this paragraph shall be repaid to the Secretary of State at such times and by such methods, and interest on those sums shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.

#### *Accounts and audit*

- 14 (1) The Commission shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The accounts of the Commission shall be audited by auditors to be appointed by the Commission with the approval of the Secretary of State.

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- [<sup>F1</sup>(3) A person shall not be qualified to be as an auditor in pursuance of sub-paragraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Commission shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Commission; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Commission.

#### Textual Amendments

**F1** Sch. 1 para. 14(3) substituted (01.10.1991) by S.I. 1991/1997, reg. 2, Sch. para.77(2).

#### *Annual reports*

- 15 (1) As soon as possible after the end of every financial year, the Commission shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall include a report by the Commission on the extent to which holders of Channel 3 or Channel 5 licences have failed to comply with the conditions included in their licences in pursuance of section 33(1)(a).
- (3) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Commission) as the Secretary of State may from time to time direct.

#### *Advisory committees*

- 16 The Commission may appoint, or arrange for the assistance of, advisory committees to give advice to them on such matters relating to the Commission's functions as the Commission may determine.

## SCHEDULE 2

Sections 5 and 88.

### RESTRICTIONS ON THE HOLDING OF LICENCES

#### PART I

#### GENERAL

- 1 (1) In this Schedule—

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“advertising agency” means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an individual who—

(a) is a director or officer of any body corporate which carries on such a business, or

(b) is employed by any person who carries on such a business;  
 “associate”—

(a) in relation to a body corporate, means a director of that body corporate or a body corporate which is a member of the same group as that body corporate, and

(b) in relation to an individual, shall be construed in accordance with subparagraph (2);

“control”—

(a) in relation to a body corporate, shall be construed in accordance with subparagraph (3), and

(b) in relation to any body other than a body corporate, means the power of a person to secure, by virtue of the rules regulating that or any other body, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

“equity share capital” has the same meaning as in the <sup>M3</sup>Companies Act 1985;

“local authority”—

(a) in relation to England and Wales, means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;

(b) in relation to Scotland, means a regional, islands or district council; and

(c) in relation to Northern Ireland, means a district council;

“local delivery licence” has the meaning given by section 72(5), and “local delivery service” has the meaning given by section 72(1);

“participant”, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body.

(2) For the purpose of determining the persons who are an individual’s associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely—

(a) any individual and that individual’s husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual’s husband or wife;

(b) any individual and any body corporate of which that individual is a director;

(c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;

(d) persons carrying on business in partnership and the husband or wife and relatives of any of them;

(e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

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and in this sub-paragraph “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person’s child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband.

- (3) For the purposes of this Schedule a person controls a body corporate if—
- (a) he has a controlling interest in the body, or
  - (b) (although not having such an interest in the body) he is able, by virtue of the holding of shares or the possession of voting power in or in relation to the body or any other body corporate, to secure that the affairs of the body are conducted in accordance with his wishes, or
  - (c) he has the power, by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate, to secure that the affairs of the body are so conducted;

and for this purpose a person has a controlling interest in a body corporate if he holds, or is beneficially entitled to, more than 50 per cent. of the equity share capital in that body, or possesses more than 50 per cent. of the voting power in it.

- (4) It is hereby declared that a person may be regarded as controlling a body corporate by virtue of paragraph (b) of sub-paragraph (3) despite the fact that—
- (a) he does not have a controlling interest in any such other body corporate as is mentioned in that paragraph, or
  - (b) any such other body corporate does not have a controlling interest in the body in question, or
  - (c) he and any such other body corporate together do not have a controlling interest in that body.

- (5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.

- (6) In this Schedule any reference to a participant with more than a 5 per cent. or (as the case may be) 20 per cent. interest in a body corporate is a reference to a person who—
- (a) holds or is beneficially entitled to more than 5 or (as the case may be) 20 per cent. of the shares in that body, or
  - (b) possesses more than 5 or (as the case may be) 20 per cent. of the voting power in that body;

and, where any such reference has been amended by an order under this Schedule varying the percentage in question, this sub-paragraph shall have effect in relation to it subject to the necessary modifications.

#### Marginal Citations

M3 1985 c. 6.

- 2 (1) Any reference in paragraph 1 above to a person—

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- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
- (b) possessing voting power, or any amount of the voting power, in a body corporate,

is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.

- (2) For the purposes of that paragraph two bodies corporate shall be treated as members of the same group if—
  - (a) one of them is a body corporate of which the other is a subsidiary, or
  - (b) both of them are subsidiaries of another body corporate.
- (3) In sub-paragraph (2) “subsidiary” has the meaning given by section 736 of the <sup>M4</sup>Companies Act 1985.

#### Marginal Citations

M4 1985 c. 6.

- 3 For the purposes of this Schedule the following persons are connected with each other in relation to a particular licence, namely—
  - (a) the licence holder;
  - (b) a person who controls the licence holder;
  - (c) an associate of the licence holder or of a person falling within sub-paragraph (b); and
  - (d) a body which is controlled by the licence holder or by an associate of the licence holder.

VALID FROM 10/08/1996

[<sup>F2</sup>3A (1) In this Schedule “coverage area”—

- (a) in relation to any service licensed by the Commission under Part I of this Act or a television multiplex service licensed by them under Part I of the 1996 Act, means the area of the United Kingdom from time to time determined by the Commission as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine,
- (b) in relation to any digital programme service which is broadcast by means of a television multiplex service, means the area of the United Kingdom from time to time determined by the Commission as that within which the digital programme service as so broadcast is capable of being received at such a level,
- (c) in relation to any service licensed by the Authority under Part III of this Act, means the area of the United Kingdom from time to time determined by the Authority as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine, and
- (d) in relation to any local radio multiplex service licensed by the Authority under Part II of the 1996 Act or any local digital sound programme service



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which is broadcast by means of such a local radio multiplex service, means the area of the United Kingdom from time to time determined by the Authority as that within which the local radio multiplex service is capable of being received at such a level.

- (2) Where the Commission or the Authority make any determination under this paragraph, they shall—
- (a) publish the determination in such manner as they think fit, and
  - (b) send a copy of it to such persons holding licences granted by them as appear to them to be affected by the determination.]

#### Textual Amendments

- F2** Sch. 2 Pt. I paras. 3A, 3B inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 4** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**

VALID FROM 10/08/1996

- F3**3B (1) For the purposes of this Schedule—
- (a) a person who holds a licence to provide digital programme services shall be taken to provide a digital programme service if, under a contract between him and a person who holds a licence to provide a television multiplex service, that person is obliged to broadcast the digital programme service by means of the television multiplex service;
  - (b) a person who holds a licence to provide national digital sound programme services shall be taken to provide a national digital sound programme service if, under a contract between him and a person who holds a licence to provide a national radio multiplex service, that person is obliged to broadcast the national digital sound programme service by means of the national radio multiplex service;
  - (c) a person who holds a licence to provide local digital sound programme services shall be taken to provide a local digital sound programme service if, under a contract between him and a person who holds a licence to provide a local radio multiplex service, that person is obliged to broadcast the local digital sound programme service by means of the local radio multiplex service.
- (2) For the purposes of this Schedule a person who holds a licence to provide digital programme services, national digital sound programme services or local digital sound programme services shall also be taken to provide a digital programme service, a national digital sound programme service or a local digital sound programme service (as the case may be) if he also holds a relevant multiplex licence and is broadcasting that service under that licence.
- (3) In sub-paragraph (2), “relevant multiplex licence” means—
- (a) in relation to digital programme services, a licence to provide a television multiplex service,
  - (b) in relation to national digital sound programme services, a licence to provide a national radio multiplex service, and

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- (c) in relation to local digital sound programme services, a licence to provide a local radio multiplex service.

#### Textual Amendments

- F3** Sch. 2 Pt. I paras. 3A, 3B inserted (10.8.1996 for certain purposes otherwise 1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. I para. 4** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**

- 4 An order under this Schedule shall not be made by the Secretary of State unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

## PART II

### DISQUALIFICATION FOR HOLDING LICENCES

#### *General disqualification of non-EEC nationals and bodies having political connections*

- 1 (1) Subject to sub-paragraph (2), the following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) an individual who is neither—
    - (i) a national of a member State who is ordinarily resident within the European Economic Community, nor
    - (ii) ordinarily resident in the United Kingdom, the Isle of Man or the Channel Islands;
  - (b) a body corporate which is neither—
    - (i) a body formed under the law of a member State which has its registered or head office or principal place of business within the European Economic Community, nor
    - (ii) a body incorporated under the law of the Isle of Man or the Channel Islands;
  - (c) a local authority;
  - (d) a body whose objects are wholly or mainly of a political nature;
  - (e) a body affiliated to a body falling within paragraph (d);
  - (f) an individual who is an officer of a body falling within paragraph (d) or (e);
  - (g) a body corporate which is an associate of a body corporate falling within paragraph (d) or (e);
  - (h) a body corporate in which a body falling within any of paragraphs (c) to (e) and (g) is a participant with more than a 5 per cent. interest;
  - (i) a body which is controlled by a person falling within any of paragraphs (a) to (g) or by two or more such persons taken together; and
  - (j) a body corporate in which a body falling within paragraph (i), other than one which is controlled—
    - (i) by a person falling within paragraph (a), (b) or (f), or
    - (ii) by two or more such persons taken together,
 is a participant with more than a 5 per cent. interest.

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- (2) Sub-paragraph (1) shall apply in relation to—
- (a) a local delivery licence,
  - (b) a licence to provide a non-domestic satellite service,
  - (c) a licence to provide a non-domestic satellite radio service,
  - (d) a licence to provide a licensable programme service,
  - (e) a licence to provide a licensable sound programme service, or
  - (f) a licence to provide additional services (within the meaning of Part I or III of this Act) other than a licence to provide the teletext service referred to in section 49(2) of this Act,
- as if paragraphs (a) and (b) (and the reference to those paragraphs in paragraph (i)) were omitted.
- (3) In sub-paragraph (2)(c) “non-domestic satellite radio service” means a satellite service within the meaning of Part III of this Act which is not provided on any frequency allocated to the United Kingdom for broadcasting by satellite.

*Disqualification of religious bodies*

- 2 (1) Subject to sub-paragraph (2), the following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) a body whose objects are wholly or mainly of a religious nature;
  - (b) a body which is controlled by a body falling within paragraph (a) or by two or more such bodies taken together;
  - (c) a body which controls a body falling within paragraph (a);
  - (d) a body corporate which is an associate of a body corporate falling within paragraph (a), (b) or (c);
  - (e) a body corporate in which a body falling within any of paragraphs (a) to (d) is a participant with more than a 5 per cent. interest;
  - (f) an individual who is an officer of a body falling within paragraph (a); and
  - (g) a body which is controlled by an individual falling within paragraph (f) or by two or more such individuals taken together.
- (2) If on an application made to them under this sub-paragraph—
- (a) the Commission are satisfied that it is appropriate for a person to hold—
    - (i) a licence to provide a non-domestic satellite service, or
    - (ii) a licence to provide a licensable programme service, or
  - (b) the Authority are satisfied that it is appropriate for a person to hold a particular kind of licence that may be granted by them under Part III of this Act other than a national licence,
- being a person who, apart from this sub-paragraph, would be a disqualified person in relation to any such licence by virtue of sub-paragraph (1), they shall make a determination to the effect that they are so satisfied; and so long as any such determination remains in force in relation to that person, sub-paragraph (1) shall not apply to him in relation to any such licence.
- (3) The Commission and the Authority shall each publish, in such manner as they consider appropriate, general guidance to persons making applications to them under sub-paragraph (2) as to the principles to be applied by them in determining whether

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it is appropriate for such persons to hold licences falling within paragraph (a) or (as the case may be) paragraph (b) of that sub-paragraph.

*Disqualification of publicly-funded bodies for radio service licences*

- 3 (1) The following persons are disqualified persons in relation to any licence granted by the Authority other than a licence to provide a restricted service—
- (a) a body (other than a local authority) which has, in its last financial year, received more than half its income from public funds;
  - (b) a body which is controlled by a body falling within paragraph (a) or by two or more such bodies taken together; and
  - (c) a body corporate in which a body falling within paragraph (a) or (b) is a participant with more than a 5 per cent. interest.
- (2) For the purposes of sub-paragraph (1)(a) money is received from public funds if it is paid—
- (a) by a Minister of the Crown out of money provided by Parliament or out of the National Loans Fund;
  - (b) by a Northern Ireland department out of the Consolidated Fund of Northern Ireland or out of money appropriated by Measure of the Northern Ireland Assembly; or
  - (c) by a body which itself falls within sub-paragraph (1)(a), including a body which falls within that provision by virtue of this paragraph;
- but, in each case, there shall be disregarded any money paid as consideration for the acquisition of property or the supply of goods or services or as remuneration, expenses, pensions, allowances or similar benefits for or in respect of a person as the holder of an office.

*General disqualification on grounds of undue influence*

- 4 (1) A person is a disqualified person in relation to a licence granted by the Commission or the Authority if in the opinion of that body—
- (a) any relevant body is, by the giving of financial assistance or otherwise, exerting influence over the activities of that person, and
  - (b) that influence has led, is leading or is likely to lead to results which are adverse to the public interest.
- (2) In sub-paragraph (1) “relevant body”—
- (a) in relation to a licence granted by the Commission, means a body falling within paragraph 1(1)(c) to (h) or (j) above or a body which is controlled—
    - (i) by a person falling within paragraph 1(1)(c) to (g) above, or
    - (ii) by two or more such persons taken together; and
  - (b) in relation to a licence granted by the Authority, means a body falling within paragraph 1(1)(c) to (h) or (j) or 3 above or a body which is controlled as mentioned in paragraph (a)(i) or (ii) above.

*Status: Point in time view as at 06/05/1992.*

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### *General disqualification of broadcasting bodies*

- 5 The following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) the BBC;
  - (b) the Welsh Authority;
  - (c) a body corporate which is controlled by either of those bodies; and
  - (d) a body corporate in which—
    - (i) either of those bodies, or
    - (ii) a body corporate falling within sub-paragraph (c),is (to any extent) a participant.

VALID FROM 24/07/1996

### *[<sup>F4</sup>Disqualification of certain companies for certain licences]*

#### **Textual Amendments**

**F4** Sch. 2 Pt. II para. 5A and cross-heading inserted (24.7.1996 for certain purposes, otherwise 1.10.1996) by 1996 c. 55, ss. 73, 149(1)(a), **Sch. 2 Pt. II para. 9** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

- [<sup>F5</sup>5A (1) A BBC company, a Channel 4 company or an S4C company is a disqualified person in relation to—
- (a) any licence granted by the Commission to provide regional or national Channel 3 services or Channel 5, and
  - (b) any licence granted by the Commission to provide a local delivery service.
- (2) A BBC company is also a disqualified person in relation to any licence granted by the Authority to provide a national, local or restricted service within the meaning of Part III of this Act.
- (3) The Secretary of State may by order provide that sub-paragraph (1)(b) shall not have effect in relation to any local delivery service of a description specified in the order.]

#### **Textual Amendments**

**F5** Sch. 2 Pt. II para. 5A inserted (24.7.1996 for certain purposes, otherwise 1.10.1996) by 1996 c. 55, ss. 73, 149(1)(a), **Sch. 2 Pt. II para. 9** (with s. 43(1)(6)); S.I. 1996/2120, art. 4, **Sch. 1**

### *General disqualification of advertising agencies*

- 6 The following persons are disqualified persons in relation to a licence granted by the Commission or the Authority—
- (a) an advertising agency;
  - (b) an associate of an advertising agency;

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- (c) any body which is controlled by a person falling within sub-paragraph (a) or (b) or by two or more such persons taken together;
- (d) any body corporate in which a person falling within any of sub-paragraphs (a) to (c) is a participant with more than a 5 per cent. interest.

### PART III

#### RESTRICTIONS TO PREVENT ACCUMULATIONS OF INTERESTS IN LICENSED SERVICES

VALID FROM 01/11/1996

*Power to impose additional limits in relation to  
licences to provide television or radio services*

- <sup>F6</sup>16 (1) The Secretary of State may, in the case of—
- (a) any category of relevant services specified in paragraph 1(2)(b), (c), (d) or (f), or
  - (b) any category of relevant services specified in paragraph 1(3)(c) or (e),
- by order prescribe the maximum number of licences which may at any time be held by any one person to provide relevant services falling within that category.
- (2) The Secretary of State may by order impose, in relation to any category of relevant services specified in paragraph 1(2)(a) or (b) or paragraph 1(3)(a), (b) or (f) or under sub-paragraph (1), limits on the holding of licences to provide relevant services falling within that category which are additional to the limits specified in paragraphs 2 to 15 or under that sub-paragraph and are framed—
- (a) by reference to any specified circumstances relating to the holders of the licences in question or to the services to be provided under them, or
  - (b) (in the case of licences granted by the Commission) by reference to matters determined by them under the order.
- (3) Without prejudice to the generality of sub-paragraph (2), an order made under that sub-paragraph may impose on the holder of a licence to provide any specified category of relevant services specified in paragraph 1(3) limits framed (directly or indirectly) by reference to either or both of the following matters, namely—
- (a) the number of licences of any one or more specified descriptions which are held by him or by any body controlled by him; and
  - (b) his participation, to any specified extent, in any body corporate which is the holder of any licence or licences of any one or more such descriptions.
- (4) Where a person holds—
- (a) a licence to provide a domestic satellite service,
  - (b) a licence to provide a non-domestic satellite service, or
  - (c) a licence to provide a satellite radio service,
- which, in accordance with section 44(2), 45(3) or 86(2), authorises the provision of a multichannel service, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences to provide domestic satellite services, non-domestic satellite services or (as the case may be) satellite radio

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services as corresponds to the number of channels on which the service may be provided.

(5) In sub-paragraph (4)—

- (a) “multichannel service” means a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies; and
- (b) any reference to the number of channels on which such a service may be provided is a reference to the number of different frequencies involved.

(6) Where a person who holds a licence to provide any of the services specified in sub-paragraph (4)(a), (b) or (c) provides that service by broadcasting two or more programmes simultaneously in digital form on a single frequency, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences as corresponds to the number of programmes that are simultaneously transmitted.

#### Textual Amendments

- F6** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

VALID FROM 01/11/1996

#### *Connected persons*

<sup>F7</sup>17 (1) Subject to sub-paragraph (2), for the purposes of—

- (a) paragraphs 2 to 15, and
- (b) any order under paragraph 13 or 16(1) or (2),

a person shall be treated as holding a licence if the licence is held by a person connected with him and shall be treated as providing a service if the service is provided by a person connected with him.

(2) For the purposes of paragraph 12 and any order under paragraph 13, a person shall not be treated as holding a licence to provide a local radio service merely because he is a director of a body corporate which holds the licence.

(3) Any provision of paragraphs 2 to 14 which refers to a person’s participation in a body corporate shall have effect as if he and every person connected with him were one person.

#### Textual Amendments

- F7** Sch. 2 Pt. III substituted (1.11.1996 except so far as relating to paras. 1(2)(b), 2(7) and otherwise 1.4.1997) by 1996 c. 55, s. 73 **Sch. 2 Pt. III para. 10** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

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### *Preliminary*

- 1 (1) In this Part of this Schedule “relevant services” means any such services as are mentioned in sub-paragraphs (2) and (3) and, for the purposes of this Part, relevant services shall (subject to paragraphs 2(1) and 5(1) below) be divided into the twelve categories specified in those sub-paragraphs.
- (2) In the case of services licensed by the Commission, the categories are—
- (a) regional and national Channel 3 services and Channel 5;
  - (b) domestic satellite services;
  - (c) non-domestic satellite services;
  - (d) licensable programme services;
  - (e) additional services (within the meaning of Part I of this Act); and
  - (f) local delivery services.
- (3) In the case of services licensed by the Authority, the categories are—
- (a) national radio services;
  - (b) local radio services;
  - (c) restricted radio services;
  - (d) satellite radio services;
  - (e) licensable sound programme services; and
  - (f) additional services (within the meaning of Part III of this Act).
- (4) References in this Part to national, local, restricted or satellite radio services are references to national, local, restricted or satellite services within the meaning of Part III of this Act.

### *Limits on the holding of licences to provide particular categories of services*

- 2 (1) Subject to sub-paragraph (3), the maximum number of licences which may at any time be held by any one person to provide relevant services falling within each of the following categories shall be—
- (a) two in the case of regional Channel 3 services;
  - (b) one in the case of national Channel 3 services;
  - (c) one in the case of Channel 5;
  - (d) one in the case of national radio services;
  - (e) twenty in the case of local radio services; and
  - (f) six in the case of restricted radio services.
- (2) The Secretary of State may, in the case of any category of relevant services not falling within sub-paragraph (1), by order prescribe the maximum number of licences which may at any time be held by any one person to provide relevant services falling within that category.
- (3) The Secretary of State may by order—
- (a) amend sub-paragraph (1) by substituting a different limit for any limit for the time being specified there;
  - (b) impose, in relation to any category of relevant services specified in or under sub-paragraph (1) or (2), limits on the holding of licences to provide



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- relevant services falling within that category which are additional to any limits specified in or under that sub-paragraph and are framed—
- (i) by reference to any specified circumstances relating to the holders of the licences in question or to the services to be provided under them, or
  - (ii) (in the case of licences granted by the Commission) by reference to matters determined by them under the order.
- (4) Without prejudice to the generality of sub-paragraph (3)(b), an order made in pursuance of that provision may impose on the holder of a licence to provide any specified category of relevant services limits framed (directly or indirectly) by reference to either or both of the following matters, namely—
- (a) the number of licences of any one or more specified descriptions which are held by him or by any body controlled by him; and
  - (b) his participation, to any specified extent, in any body corporate which is the holder of any licence or licences of any one or more such descriptions.
- (5) Where a person holds a licence to provide a local radio service which, in accordance with section 86(2), authorises the provision of a multichannel service, he shall be treated for the purposes of sub-paragraph (1) as holding such number of licences to provide local radio services as corresponds to the number of channels on which the service may be provided.
- (6) Where a person holds—
- (a) a licence to provide a domestic satellite service,
  - (b) a licence to provide a non-domestic satellite service, or
  - (c) a licence to provide a satellite radio service,
- which, in accordance with section 44(2), 45(3) or 86(2), authorises the provision of a multichannel service, he shall be treated for the purposes of any order under sub-paragraph (2) as holding such number of licences to provide domestic satellite services, non-domestic satellite services or (as the case may be) satellite radio services as corresponds to the number of channels on which the service may be provided.
- (7) In this paragraph—
- (a) “multichannel service” means a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies; and
  - (b) any reference to the number of channels on which such a service may be provided is a reference to the number of different frequencies involved.
- (8) For the purposes of—
- (a) sub-paragraphs (1), (5) and (6), and
  - (b) any order under sub-paragraph (2),
- a person shall be treated as holding a licence if the licence is held by a person connected with him.

*Limits on the holding of licences to provide different categories of services*

- 3           Where any restriction is imposed by or under paragraph 5 or 6 below on the holder of a particular kind of licence in relation to participation in a body corporate which

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is the holder of another kind of licence, any person who holds one of those kinds of licence shall not also hold the other kind of licence.

*Limits on participation by holders of licences in bodies licensed to provide services of same category*

- 4 The Secretary of State may by order prescribe restrictions on the extent to which the holder of a licence to provide a relevant service falling within a particular category may be a participant—
- (a) in a body corporate which is the holder of another licence to provide a relevant service falling within that category, or
  - (b) in two or more such bodies corporate.

*Special rules relating to participation by holders of television broadcasting licences*

- 5 (1) For the purposes of paragraph 4 above and this paragraph the services specified in paragraph 1(2)(a) above shall be divided into the following three categories—
- (a) regional Channel 3 services;
  - (b) national Channel 3 services; and
  - (c) Channel 5.
- (2) Where a person is the holder of a licence to provide a service falling within one of those categories, he shall not be a participant with more than a 20 per cent. interest in any body corporate which is the holder of a licence to provide a service falling within either of the other two categories.
- (3) The Secretary of State may by order—
- (a) amend sub-paragraph (2) by substituting a different percentage for the percentage for the time being specified there;
  - (b) prescribe restrictions on the extent to which the holder of a licence to provide a service falling within one of the categories specified in sub-paragraph (1) may be a participant in two or more bodies corporate which are the holders of licences to provide services falling within either of the other two categories so specified.

*Limits on participation by holders of licences in bodies licensed to provide services of different category*

- 6 (1) Where a person is the holder of a licence to provide a relevant service falling within one of the categories specified in sub-paragraph (2)(a) or (b) or (3)(a) of paragraph 1 above, he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a relevant service falling within either of the other categories so specified.
- (2) Subject to sub-paragraphs (3) and (4), where a person—
- (a) is the holder of a licence to provide a non-domestic satellite service, or
  - (b) provides a satellite television service (other than a non-domestic satellite service) which is provided on a non-allocated frequency and appears to the

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Commission to be intended for general reception in the United Kingdom (whether or not it appears to them to be also intended for such reception elsewhere),

he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a relevant service falling within one of the categories referred to in sub-paragraph (1); and, where a person is the holder of a licence to provide such a relevant service, he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of such a licence as is mentioned in paragraph (a) above or which provides such a service as is mentioned in paragraph (b) above.

(3) In sub-paragraph (2)—

“non-allocated frequency” means a frequency other than one allocated to the United Kingdom for broadcasting by satellite, and

“satellite television service” means a service consisting in the transmission of television programmes by satellite;

and a service shall be disregarded for the purposes of paragraph (a) or (b) of that sub-paragraph if the programmes included in the service are at all times the same as those which are for the time being broadcast in a Channel 3 service or on Channel 5.

(4) Nothing in sub-paragraph (2) shall impose any restriction—

(a) on the extent to which an excluded licensee may be a participant in a body corporate which is the holder of a licence to provide a domestic satellite service, or

(b) on the extent to which the holder of such a licence may be a participant in a body corporate which is an excluded licensee;

and for this purpose “excluded licensee” means a person who is the holder of a licence to provide a non-domestic satellite service and—

(i) is licensed under section 7 of the <sup>M5</sup>Telecommunications Act 1984 to provide a specialised satellite service, and

(ii) is so licensed (or, as the case may be, was first so licensed) by virtue of a licence granted under that section before the commencement of sub-paragraph (2), and

(iii) is not connected with any other person who is the holder of a licence to provide a non-domestic satellite service.

(5) Where a person is the holder of a licence to provide a satellite radio service, he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a relevant service falling within sub-paragraph (2) (a) or (3)(a) of paragraph 1 above; and, where a person is the holder of a licence to provide such a relevant service, he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a satellite radio service.

(6) Where a person is the holder of a licence to provide a satellite radio service which is provided on any frequency allocated to the United Kingdom for broadcasting by satellite (“a domestic licence”), he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a satellite radio service which is not provided on any such frequency (“a non-domestic licence”); and, where a person is the holder of a non-domestic licence, he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a domestic licence.

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- (7) Where a person is the holder of a licence to provide a relevant service falling within one of the categories specified—
- (a) in sub-paragraph (2)(f) or (3)(b) of paragraph 1 above, or
  - (b) in paragraph 5(1)(a) above,
- he shall not be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a relevant service falling within either of the other categories so specified if each of the services in question is provided for an area which is to a significant extent the same as that for which the other is provided.
- (8) The Secretary of State may by order prescribe restrictions—
- (a) on the extent to which—
    - (i) the holder of a relevant national or satellite licence, or
    - (ii) a person providing such a service as is mentioned in sub-paragraph (2)(b),
 may be a participant in a body corporate which is the holder of a relevant local licence, or in two or more such bodies corporate, and
  - (b) on the extent to which the holder of a relevant local licence may be a participant in a body corporate which—
    - (i) is the holder of a relevant national or satellite licence, or
    - (ii) provides such a service as is mentioned in sub-paragraph (2)(b),
 or in two or more such bodies corporate.
- (9) In sub-paragraph (8)—
- “relevant local licence” means a licence to provide a relevant service falling within either of the categories specified in paragraph 1(2)(f) or (3)(b) above; and
- “relevant national or satellite licence” means a licence to provide a relevant service falling within one of the categories specified—
- (a) in paragraph 1(2)(b) or (c) or (3)(a) or (d) above, or
  - (b) in paragraph 5(1)(b) or (c) above.
- (10) The Secretary of State may by order amend any of sub-paragraphs (1), (2) and (5) to (7) by substituting a different percentage for the percentage for the time being specified there.

#### Marginal Citations

M5 1984 c. 12.

#### *Limits on participation in bodies holding licences to extend to participation in bodies controlling such bodies*

- 7 (1) Any restriction imposed by or under paragraph 4, 5 or 6 above on participation—
- (a) in a body corporate which is the holder of a particular kind of licence, or
  - (b) in two or more such bodies,
- shall apply equally to participation—
- (i) in a body corporate which controls the holder of such a licence, or

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- (ii) in two or more bodies corporate each of which controls the holder of such a licence,  
as the case may be.
- (2) Any restriction imposed under paragraph 6(8)(b) above on participation in a body corporate providing such a service as is mentioned in paragraph 6(2)(b) shall apply equally to participation in a body corporate which controls a body providing such a service.

*Attribution of interests of connected persons*

- 8 (1) Any restriction on participation imposed by or under paragraph 4, 5 or 6 above—
- (a) on the holder of a licence, or
  - (b) on a person providing such a service as is mentioned in paragraph 6(2)(b),
- shall apply to him as if he and every person connected with him were one person.
- (2) For the purposes of this paragraph and paragraph 9 below the following persons shall be treated as connected with a person providing such a service as is mentioned in paragraph 6(2)(b), namely—
- (a) a person who controls that person;
  - (b) an associate of that person or of a person falling within paragraph (a); and
  - (c) a body which is controlled by that person or by an associate of that person.

*Restrictions imposed by orders*

- 9 (1) Without prejudice to the generality of paragraph 4 or 6(8) above, an order made in pursuance of that provision may impose restrictions framed by reference to the number of bodies corporate in which the holder of a licence, or any person connected with him, is a participant, and an order made in pursuance of paragraph 6(8)(a)(ii) may impose restrictions framed by reference to the number of bodies corporate in which a person providing such a service as is mentioned in paragraph 6(2)(b), or any person connected with him, is a participant.
- (2) Paragraph 8(2) above applies for the purposes of this paragraph.

*Power to impose restrictions on participation by persons other than licence holders*

- 10 (1) Where, by virtue of any provision of this Part of this Schedule, any restriction applies in relation to participation in any body or bodies corporate of a particular description, the Secretary of State may by order provide for further restrictions to apply in relation to participation in any such body or bodies corporate, being restrictions which—
- (a) are imposed on persons to whom the first-mentioned restriction does not apply, and
  - (b) are framed by reference to the number of bodies corporate in which such persons, or persons connected with them, are participants.
- (2) For the purposes of this paragraph the following persons shall be treated as connected with a particular person, namely—

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- (a) a person who controls that person;
- (b) an associate of that person or of a person falling within paragraph (a); and
- (c) a body which is controlled by that person or by an associate of that person.

## PART IV

### RESTRICTIONS ON CONTROLLING INTERESTS IN BOTH NEWSPAPERS AND LICENSED SERVICES

VALID FROM 10/08/1996

*Additional restrictions applying where control of or by  
newspaper proprietor may operate against public interest*

- <sup>F8</sup>11 (1) A body corporate which holds a licence to provide digital programme services and is, or is connected with, the proprietor of a national newspaper or a relevant local newspaper, shall not begin to provide a digital programme service if the Commission determine before the end of the period specified in sub-paragraph (2) that in all the circumstances the provision of that service by that body corporate could be expected to operate against the public interest.
- (2) The period referred to in sub-paragraph (1) is the period of three months beginning with the day on which the Commission are notified pursuant to section 19(3) of the 1996 Act of an agreement to provide the digital programme service, or such longer period beginning with that day as the Commission may in a particular case, after consultation with the licence holder, notify him during those three months as being the period which they reasonably consider necessary in the circumstances.
- (3) Subject to sub-paragraph (4), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a national newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.
- (4) Sub-paragraph (3) does not apply in any case where the body corporate which is providing the digital programme service—
- (a) is already the proprietor of some other national newspaper or is already connected with such a proprietor, and
  - (b) does not become connected with—
    - (i) the holder of a licence to provide a regional Channel 3 service or a local radio service, or
    - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence.
- (5) Subject to sub-paragraph (6), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a relevant local newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.

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- (6) Sub-paragraph (5) does not apply in any case where the body corporate which is providing the digital programme service—
- (a) is already the proprietor of some other local newspaper which is a relevant local newspaper in relation to the service referred to in that sub-paragraph, or is already connected with such a proprietor, and
  - (b) does not become connected with—
    - (i) the holder of a licence to provide a regional Channel 3 service or local radio service in relation to which that other local newspaper is also a relevant local newspaper, or
    - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence in relation to which that other local newspaper is also a relevant local newspaper.
- (7) In this paragraph—
- (a) references to a relevant local newspaper shall be construed in accordance with paragraph 10(6), and
  - (b) “the permitted period” has the meaning given by paragraph 9(5) and (6).

#### Textual Amendments

- F8** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

- <sup>F9</sup>12 (1) Notice may be given to the relevant authority in accordance with this paragraph of proposed arrangements which might result—
- (a) in the application of paragraph 9(2) to a body corporate which holds a licence to provide any of the services specified in paragraph 9(4),
  - (b) in the application of paragraph 10(2) or (4) to a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service, or
  - (c) in the application of paragraph 11(1), (3) or (5) to a body corporate which holds a licence to provide digital programme services.
- (2) A notice under sub-paragraph (1)—
- (a) may be given by the licence holder or any other person appearing to the relevant authority to be concerned,
  - (b) shall state that the existence of the proposal has been made public, and
  - (c) shall be in such form as the relevant authority may require.
- (3) The relevant authority may, at any time before making a determination under this paragraph, require the person who gave the notice to provide them with such further information with respect to the notified arrangements as they think fit.
- (4) The relevant authority shall, as soon as reasonably practicable, determine whether in all the circumstances, if the notified arrangements were carried into effect, the continued holding of the licence by the body corporate could be expected to operate against the public interest.
- (5) If—

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- (a) the relevant authority determine, in relation to any notified arrangements, that the fact referred to in sub-paragraph (4) could not be expected to operate against the public interest, and
- (b) the notified arrangements are carried into effect within the period of 12 months beginning with the date of the determination.

the relevant authority may not make any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) arising out of the carrying into effect of the notified arrangements.

- (6) Sub-paragraph (5) does not prevent any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) being made if—
  - (a) any information given to the relevant authority in respect of the notified arrangements by the person who gave the notice is in any material respect false or misleading, or
  - (b) since the making of the determination there has been a material change of circumstances (other than such a change of which notice was given to the relevant authority under sub-paragraph (3) before the making of the determination).
- (7) In this paragraph “the notified arrangements” means the arrangements mentioned in the notice under sub-paragraph (1) or arrangements not differing from them in any material respect.

#### Textual Amendments

- F9** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

- F10** 13 (1) The matters to which the relevant authority shall have regard in determining, for the purposes of paragraph 9, 10, 11 or 12, whether the holding of a licence by a body corporate which is, or is connected with, the proprietor of a newspaper operates, or could be expected to operate, against the public interest include—
- (a) the desirability of promoting—
    - (i) plurality of ownership in the broadcasting and newspaper industries, and
    - (ii) diversity in the sources of information available to the public and in the opinions expressed on television or radio or in newspapers,
  - (b) any economic benefits (such as, for example, technical development or an increase in employment or in the value of goods or services exported) that might be expected to result from the holding of the licence by that body but could not be expected to result from the holding of the licence by a body corporate which was not, and was not connected with, the proprietor of a newspaper, and
  - (c) the effect of the holding of the licence by that body on the proper operation of the market within the broadcasting and newspaper industries or any section of them
- (2) References in paragraphs 9, 10, 11 and 12 to the public interest include references to the public interest within any area of the United Kingdom.



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#### Textual Amendments

**F10** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

<sup>F11</sup>14 In relation to any determination under paragraph 11(1), (3) or (5), references in paragraphs 12 and 13 to the holding of the licence shall have effect as references to the provision of the service.

#### Textual Amendments

**F11** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

VALID FROM 10/08/1996

#### *Restricted television services*

<sup>F12</sup>15 (1) The Secretary of State may by order—

- (a) prescribe restrictions on the holding of one or more licences to provide restricted television services by a person who runs a national or local newspaper, and
- (b) apply any of the provisions of paragraphs 9 to 13, with such modifications as may be specified in the order, in relation to the holding of a licence to provide a restricted television service.

(2) Any order under sub-paragraph (1) may provide that, for the purposes of any provision of the order, a person is to be treated as holding a licence if the licence is held by a person connected with him.

(3) In this paragraph “restricted television service” means a restricted service within the meaning of Part I of this act.

#### Textual Amendments

**F12** Sch. 2 Pt. IV substituted (10.8.1996 for certain purposes, 1.11.1996 for certain further purposes and otherwise 1.4.1997) by 1996 c. 55, s. 73, **Sch. 2 Pt. III para. 11** (with s. 43(1)(6)); S.I. 1996/2120, arts. 3, 5, **Sch. 2**; S.I. 1997/1005, **art. 4**

#### *Preliminary*

1 (1) In this Part of this Schedule references to a national or local newspaper are (subject to sub-paragraph (2)) references to a national or local newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.

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- (2) The relevant authority may determine that a newspaper which would not otherwise be a national or local newspaper for the purposes of this Part of this Schedule shall be treated as a national or (as the case may be) a local newspaper for the purposes of any particular restriction imposed by or under this Part of this Schedule if it appears to them to be appropriate for the newspaper to be so treated having regard to its circulation or influence in the United Kingdom or (as the case may be) in a part of the United Kingdom; and in this sub-paragraph “the relevant authority”—
- (a) in relation to a restriction having effect in relation to any licence which may be granted by the Commission, means the Commission; and
  - (b) in relation to a restriction having effect in relation to any licence which may be granted by the Radio Authority, means that Authority.
- (3) For the purposes of this Part of this Schedule the following persons are connected with each other in relation to a particular national or local newspaper, namely—
- (a) the proprietor of the newspaper;
  - (b) a person who controls the proprietor;
  - (c) an associate of the proprietor or of a person falling within paragraph (b); and
  - (d) a body which is controlled by the proprietor or by an associate of the proprietor.
- (4) Any reference in this Part of this Schedule, in relation to a local newspaper, to a relevant local radio service or a relevant local delivery service is a reference to a local radio service or a local delivery service which serves an area which is to a significant extent the same as that served by the newspaper.
- (5) Paragraph 1(4) in Part III of this Schedule shall have effect for the purposes of this Part of this Schedule as it has effect for the purposes of Part III.

*Restrictions on proprietors of newspapers*

- 2 (1) Subject to sub-paragraph (2), no proprietor of a national or local newspaper shall be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide—
- (a) a Channel 3 service or Channel 5, or
  - (b) a national radio service.
- (2) Sub-paragraph (1) shall not impose any restriction on the proprietor of a local newspaper as respects participation in a body corporate which is the holder of a licence to provide a regional Channel 3 service except where the newspaper and the service each serve an area which is to a significant extent the same as that served by the other.
- (3) No person who—
- (a) is the proprietor of a national newspaper, and
  - (b) is a participant with more than a 5 per cent. interest in a body corporate falling within sub-paragraph (1) (but, in accordance with that sub-paragraph, is not a participant with more than a 20 per cent. interest in it),
- shall be a participant with more than a 5 per cent. interest in any other such body corporate.

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- (4) No person who is the proprietor of a local newspaper shall be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a relevant local radio service or a relevant local delivery service.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraph (1), (3) or (4) by substituting a different percentage for the percentage for the time being specified there;
  - (b) prescribe restrictions (in addition to that imposed by sub-paragraph (3)) on the extent to which the proprietor of a national or local newspaper may be a participant in two or more bodies corporate which are the holders of licences to provide services falling within sub-paragraph (1)(a) or (b);
  - (c) prescribe restrictions on the extent to which the proprietor of a national newspaper may be a participant in a body corporate which is the holder of a licence to provide a relevant service falling within paragraph 1(2)(f) or (3)(b) in Part III of this Schedule, or in two or more such bodies corporate;
  - (d) prescribe restrictions on the extent to which the proprietor of a local newspaper may be a participant in two or more bodies corporate which are the holders of licences to provide relevant local radio services or relevant local delivery services;
  - (e) prescribe restrictions on the extent to which a person who is the proprietor of a newspaper of any specified description may be a participant in a body corporate which is the holder of a licence to provide any specified description of service falling within paragraph 1(2)(b) or (c) or (3)(d) in Part III of this Schedule or in two or more such bodies corporate.
- (6) Paragraph 7(1) in Part III of this Schedule shall have effect in relation to any restriction imposed by or under this paragraph as it has effect in relation to any restriction imposed by or under paragraph 4, 5 or 6 in Part III.

*Restrictions on holders of licences*

- 3 (1) Subject to sub-paragraph (2), no person who is the holder of a licence to provide—
- (a) a Channel 3 service or Channel 5, or
  - (b) a national radio service,
- shall be a participant with more than a 20 per cent. interest in a body corporate which runs a national or local newspaper.
- (2) Sub-paragraph (1) shall not impose any restriction on the holder of a licence to provide a regional Channel 3 service as respects participation in a body corporate which runs a local newspaper except where the service and the newspaper each serve an area which is to a significant extent the same as that served by the other.
- (3) No person who—
- (a) is the holder of any such licence as is mentioned in sub-paragraph (1), and
  - (b) is a participant with more than a 5 per cent. interest in a body corporate which runs a national newspaper (but, in accordance with that sub-paragraph, is not a participant with more than a 20 per cent. interest in it),
- shall be a participant with more than a 5 per cent. interest in any other such body corporate.

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- (4) No person who is the holder of a licence to provide a relevant local radio service or a relevant local delivery service shall be a participant with more than a 20 per cent. interest in a body corporate which runs a local newspaper.
- (5) The Secretary of State may by order—
- (a) vary sub-paragraph (1), (3) or (4) by substituting a different percentage for the percentage for the time being specified there;
  - (b) prescribe restrictions (in addition to that imposed by sub-paragraph (3)) on the extent to which the holder of such a licence as is mentioned in sub-paragraph (1) may be a participant in two or more bodies corporate which run national or local newspapers;
  - (c) prescribe restrictions on the extent to which the holder of a licence to provide a relevant service falling within paragraph 1(2)(f) or (3)(b) in Part III of this Schedule may be a participant in a body corporate which runs a national newspaper, or in two or more such bodies corporate;
  - (d) prescribe restrictions on the extent to which the holder of such a licence as is mentioned in sub-paragraph (4) may be a participant in two or more bodies corporate which run local newspapers;
  - (e) prescribe restrictions on the extent to which the holder of a licence to provide any specified description of service falling within paragraph 1(2)(b) or (c) or (3)(d) in Part III of this Schedule may be a participant in a body corporate which runs a national or local newspaper, or in two or more such bodies corporate.
- (6) For the purposes of this paragraph a person runs a national or local newspaper if—
- (a) he is the proprietor of such a newspaper; or
  - (b) he controls a body which is the proprietor of such a newspaper.

*Attribution of interests of connected persons*

- 4 Any restriction on participation imposed by or under paragraph 2 or 3 above—
- (a) on the proprietor of any newspaper, or
  - (b) on the holder of any licence,
- shall apply to him as if he and every person connected with him were one person.

*Restrictions imposed by orders*

- 5 Without prejudice to the generality of paragraph 2(5) or 3(5) above, an order made in pursuance of that provision may impose restrictions framed by reference to the number of bodies corporate in which—
- (a) the proprietor of a newspaper, or
  - (b) the holder of a licence,
- as the case may be, or any person connected with any such person, is a participant.

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## PART V

### RESTRICTION ON HOLDING OF LICENCES BY OPERATORS OF PUBLIC TELECOMMUNICATION SYSTEMS

The Secretary of State may by order specify categories of licences granted by the Commission or the Authority which may not be held by all or any of the following, namely—

- (a) a national public telecommunications operator or a national public telecommunications operator of any description specified in the order;
- (b) a person who controls such an operator;
- (c) an associate of such an operator or of a person falling within sub-paragraph (b);
- (d) a body which is controlled by such an operator or by an associate of such an operator.

In this paragraph “national public telecommunications operator” means a public telecommunications operator (within the meaning of the <sup>M6</sup>Telecommunications Act 1984) who is authorised to run a telecommunication system for the whole, or substantially the whole, of the United Kingdom.

#### Marginal Citations

M6 1984 c. 12.

#### Marginal Citations

M6 1984 c. 12.

## SCHEDULE 3

Section 23.

### THE CHANNEL FOUR TELEVISION CORPORATION: SUPPLEMENTARY PROVISIONS

VALID FROM 01/01/1993

#### *Status and capacity*

- 1 (1) The Corporation shall be a body corporate.
- (2) The Corporation shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the Corporation as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including the borrowing of money.

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VALID FROM 01/01/1993

*Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Corporation so long as he is—
- (a) a governor or employee of the BBC;
  - (b) a member or employee of the Commission;
  - (c) a member or employee of the Radio Authority established by this Act;
  - (d) a member or employee of the Broadcasting Complaints Commission; or
  - (e) a member or employee of the Broadcasting Standards Council established by this Act.
- (2) Before appointing a person to be a member of the Corporation, the Commission shall satisfy themselves that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Corporation; and the Commission shall also satisfy themselves from time to time with respect to every member of the Corporation that he has no such interest.
- (3) Any person who is, or whom the Commission propose to appoint to be, a member of the Corporation shall, whenever requested by the Commission to do so, furnish them with such information as they consider necessary for the performance by them of their duties under sub-paragraph (2).

VALID FROM 01/01/1993

*Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Corporation shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Corporation for more than five years at a time.
- (3) Any member of the Corporation may at any time resign his office by notice to the Commission.
- (4) This paragraph does not apply in relation to ex-officio members of the Corporation.

VALID FROM 01/01/1993

*Remuneration and pensions of members*

- 4 (1) The Corporation may pay —
- (a) to each member other than an ex-officio member such remuneration and allowances, and

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(b) to each ex-officio member such allowances,  
as the Commission may determine.

- (2) The Corporation may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Commission may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Commission that there are special circumstances which make it right for him to receive compensation, the Corporation may make a payment to him of such amount as the Commission may determine.
- (4) Sub-paragraphs (2) and (3) do not apply in relation to ex-officio members of the Corporation.
- (5) The approval of the Treasury shall be required for any determination under this paragraph other than a determination under sub-paragraph (1) having effect in relation to an ex-officio member of the Corporation.

VALID FROM 01/01/1993

*Disqualification of members of Corporation for  
House of Commons and Northern Ireland Assembly*

5 In Part II of Schedule 1 to the <sup>M7</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Channel Four Television Corporation” and a corresponding amendment shall be made in Part II of Schedule 1 to the

<sup>M8</sup>

Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M7** 1975 c. 24.

**M8** 1975 c. 25.

VALID FROM 01/01/1993

*Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Corporation and the arrangements relating to their meetings shall be such as the Corporation may determine.
- (2) The arrangements may, with the approval of the Commission, provide for the discharge, under the general direction of the Corporation, of any of the Corporation’s functions by a committee or by one or more of the members or employees of the Corporation.

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- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Corporation shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Corporation, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Corporation at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Corporation by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Corporation in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Corporation include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Corporation shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

VALID FROM 01/01/1993

*Employees of the Corporation*

- 9 (1) The Corporation shall appoint a chief executive of the Corporation, and may appoint such other employees as they may determine.
- (2) If the Corporation determine to do so in the case of any of their employees, the Corporation shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Corporation may determine.
- (3) If any employee of the Corporation—
- (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the Corporation other than an ex-officio member,
- he may, if the Commission so determine, be treated for the purposes of the pension scheme as if his service as a member of the Corporation were service as an employee of the Corporation.



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VALID FROM 01/01/1993

*Authentication of Corporation's seal*

- 10 The application of the seal of the Corporation shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

VALID FROM 01/01/1993

*Presumption of authenticity of documents issued by Corporation*

- 11 Any document purporting to be an instrument issued by the Corporation and to be duly executed under the seal of the Corporation or to be signed on behalf of the Corporation shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

*Accounts and audit*

VALID FROM 01/01/1993

- 12 (1) The Corporation shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The accounts of the Corporation shall be audited by auditors to be appointed by the Corporation with the approval of the Secretary of State.
- [<sup>F13</sup>(3) A person shall not be qualified to be appointed as a auditor in pursuance of subparagraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Corporation shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Corporation; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Corporation.

**Textual Amendments**

**F13** Sch. 3 para. 12(3) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para.77(3).

*Status: Point in time view as at 06/05/1992.*

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VALID FROM 01/01/1993

*Annual reports*

- 13 (1) As soon as possible after the end of every financial year, the Corporation shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Corporation) as the Secretary of State may from time to time direct.

SCHEDULE 4

Section 39.

REFERENCES WITH RESPECT TO NETWORKING ARRANGEMENTS

*Report by Director on reference under s. 39*

- 1 (1) Where any reference is made to the Director General of Fair Trading (“the Director”) under section 39(12)(a), it shall be the duty of the Director—
- (a) to publish a notice of the reference, together with a description of the arrangements to which it relates, in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by or be likely to have an interest in it;
  - (b) to consider whether those arrangements satisfy the competition test in accordance with paragraph 2; and
  - (c) to make a report on those arrangements within the period of six months beginning with the date of publication of the notice referred to in paragraph (a).
- (2) If, while the Director is proceeding with any such reference, he is informed in accordance with section 39(12)(b) of this Act of any modification to the arrangements in question, he may, if he thinks fit, treat the reference as varied so far as is necessary to take account of the modification; and, if he does so, references to those arrangements in sub-paragraph (1)(b) and (c) shall accordingly be construed as references to those arrangements as modified.
- (3) The Director’s report on any arrangements shall contain his conclusions on the question whether the arrangements satisfy the competition test and may contain such an account of his reasons for those conclusions as is, in his opinion, expedient for facilitating a proper understanding of those conclusions.
- (4) If those conclusions are to the effect that the arrangements do not satisfy the competition test, the report shall specify the modifications which the Director considers would, if incorporated in the arrangements, result in them satisfying that test.

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- (5) Subsections (6) and (7) of section 186 of this Act shall have effect in relation to any report made by the Director under this paragraph as they have effect in relation to any report made by him under that section.
- (6) The Director shall send a copy of any report made by him under this paragraph to the Commission and to every holder of a regional Channel 3 licence.

#### *The competition test*

- 2 (1) For the purposes of this Schedule arrangements satisfy the competition test if—
  - (a) they do not have, and are not intended or likely to have, the effect of restricting, distorting or preventing competition in connection with any business activity in the United Kingdom; or
  - (b) they do have, or are intended or likely to have, such an effect but they would satisfy the criteria set out in paragraph 3 of Article 85 of the E.E.C. Treaty (agreements contributing to improving the production or distribution of goods or to promoting technical or economic progress) if that paragraph were to be construed as relating only to the effects within the United Kingdom of agreements between undertakings.
- (2) For the purposes of sub-paragraph (1)(b) any arrangements made by the Commission shall be treated as if they constituted an agreement between undertakings within the meaning of Article 85(3).
- (3) In determining whether any arrangements would satisfy the criteria referred to in that provision, the Director or, as the case may be, the Monopolies and Mergers Commission (“the MMC”) shall have regard to any principles laid down by or decision of the European Court, or any court attached thereto, so far as relevant to the construction of Article 85(3).

#### *Duty to modify arrangements in consequence of Director’s report*

- 3 (1) Where the Director’s report on any arrangements specifies any modifications in pursuance of paragraph 1(4), then (subject to sub-paragraph (2))—
  - (a) if the arrangements were made by the holders of regional Channel 3 licences, the Commission shall notify all the holders of such licences of the period within which the modifications are to be incorporated in the arrangements, being such period as may be determined by the Director after consulting the Commission; and
  - (b) if the arrangements were made by the Commission, the Commission shall—
    - (i) incorporate those modifications in the arrangements with effect from such date as may be so determined, and
    - (ii) notify all the holders of such licences of the arrangements as modified.
- (2) If a reference relating to the Director’s report is made to the MMC under paragraph 4 and they have begun to proceed with it in accordance with that paragraph, the modifications referred to in sub-paragraph (1) above shall not be required to be incorporated in the arrangements by virtue of that sub-paragraph—

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- (a) if the reference is in respect of the arrangements as a whole, or
  - (b) (in any other case) to the extent that the modifications fall to be considered by the MMC on the reference.
- (3) Each regional Channel 3 licence shall include such conditions as appear to the Commission to be appropriate in consequence of this paragraph.

#### *References to MMC*

- 4 (1) Where the Director’s report on any arrangements contains any such conclusions as are mentioned in paragraph 1(4), the Commission or the holder of any regional Channel 3 licence may, within the relevant period, make to the MMC a reference which is so framed as to require the MMC to investigate and report on either or both of the following questions, namely—
- (a) whether the arrangements, or any particular provisions of the arrangements, satisfy the competition test;
  - (b) whether the modifications specified in the report, or any particular modification so specified, ought to be incorporated in the arrangements for the purpose of enabling them to satisfy that test.
- (2) In sub-paragraph (1) “the relevant period” means the period of four weeks beginning with the date of publication of the Director’s report.
- (3) Where a reference is made to the MMC under this paragraph, the MMC shall (subject to sub-paragraphs (4) and (5))—
- (a) publish a notice of the reference in such manner as they consider most suitable for bringing it to the attention of persons who, in the opinion of the MMC, would be affected by or be likely to have an interest in it; and
  - (b) make a report on the reference within the period of three months beginning with the date of publication of the notice referred to in paragraph (a).
- (4) The period referred to in sub-paragraph (3)(b) may be extended by the MMC by a further period of three months if they consider it necessary to do so.
- (5) The MMC shall not be required to proceed with any reference under this paragraph which appears to them to be frivolous or vexatious; but, where they decide not to proceed with any such reference, they shall publish a notice of their decision in such manner as they consider appropriate.
- (6) If—
- (a) while the MMC are proceeding with any reference under this paragraph, the Director is informed in accordance with section 39(12)(b) of this Act of any modification to the arrangements in respect of which the reference has been made, and
  - (b) it appears to him that the modification is material to any issue falling to be considered by the MMC on the reference,
- he shall refer the modification to the MMC, who may, if they think fit, treat the reference as varied so far as is necessary to take account of the modification; and, if they do so, references to those arrangements in paragraphs 5 and 6 shall accordingly be construed as references to those arrangements as modified.
- (7) The following provisions, namely—

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- (a) sections 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the <sup>M9</sup>Fair Trading Act 1973,
- (b) Part II of Schedule 3 to that Act (performance of functions of MMC), and
- (c) section 24 of the <sup>M10</sup>Competition Act 1980 (modification of provisions about performance of such functions),

shall apply in relation to references under this paragraph as if—

- (i) the functions of the MMC in relation to such references were functions under the Fair Trading Act 1973,
  - (ii) the expression “merger reference” included a reference under this paragraph,
  - (iii) in the said section 81, subsections (3) and (4) were omitted, and
  - (iv) in the said Schedule 3, paragraphs 11 and 16(2) were omitted.

#### Marginal Citations

**M9** 1973 c. 41

**M10** 1980 c. 21

VALID FROM 29/12/2003

#### *Further provision about references under paragraph 4*

[<sup>F14</sup>4A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of references under paragraph 4 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of sub-paragraph (1), have effect as if—

- (a) subsection (2) were omitted; and
- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1), have effect as if—

- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
- (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
- (c) the words “by this Part” were omitted.

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- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1), have effect in relation to those sections as applied by virtue of that sub-paragraph.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that sub-paragraph.]

#### Textual Amendments

**F14** Sch. 4 para. 4A inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(e)**

#### *Report by MMC on reference under paragraph 4*

- 5 (1) The MMC's report on a reference under paragraph 4 shall contain their conclusions on the question or questions comprised in the reference, together with such an account of their reasons for those conclusions as is, in their opinion, expedient for facilitating a proper understanding of those conclusions.
- (2) If the MMC's conclusions on any such question as is mentioned in paragraph 4(1)(a) are to the effect that the arrangements, or any particular provisions of the arrangements, do not satisfy the competition test, the report shall specify the modifications which the MMC consider would, if incorporated in the arrangements, result in the arrangements or (as the case may be) the provisions in question satisfying that test (and those modifications may to any extent differ from those specified by the Director in pursuance of paragraph 1(4)).
- (3) If the MMC's conclusions on any such question as is mentioned in paragraph 4(1)(b) are to the effect that any modification so specified by the Director ought to be incorporated for the purpose mentioned in that provision, the MMC shall (unless the report specifies a like modification in pursuance of sub-paragraph (2) above) affirm that modification in the report; but, if their conclusions on any such question are to the effect that any such modification ought not to be so incorporated, the report shall specify such other modification (if any) as appears to them to be appropriate for that purpose.
- (4) The MMC shall—
- (a) publish any report made by them under this paragraph in such manner as they consider appropriate; and
  - (b) send a copy of it to the Director, to the Commission and to every holder of a regional Channel 3 licence.
- (5) Section 82 of the <sup>M11</sup>Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the MMC on references under paragraph 4 as it applies in relation to reports of the MMC under that Act.

#### Marginal Citations

**M11** 1973 c. 41

*Status: Point in time view as at 06/05/1992.*

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*Duty to modify arrangements in consequence of MMC's report*

- 6 (1) Where the MMC's report on any reference under paragraph 4 specifies any modifications or modification in pursuance of paragraph 5(2) or (3), or any modification specified by the Director is affirmed in such a report, then—
- (a) if the arrangements to which the report relates were made by the holders of regional Channel 3 licences, the Commission shall notify all the holders of such licences of the period within which any such modifications or modification are or is to be incorporated in the arrangements, being such period as may be determined by the Director after consulting the Commission; and
  - (b) if those arrangements were made by the Commission, the Commission shall—
    - (i) incorporate any such modifications or modification in the arrangements with effect from such date as may be so determined, and
    - (ii) notify all the holders of such licences of the arrangements as modified.
- (2) Paragraph 3(3) shall have effect in relation to this paragraph as it has effect in relation to paragraph 3.

*Power of Director to review previous decision with respect to arrangements*

- 7 (1) The Director may at any time after making a report under paragraph 1 with respect to any arrangements—
- (a) consider afresh whether the arrangements (as for the time being in force) satisfy the competition test; and
  - (b) make a further report on those arrangements in accordance with sub-paragraphs (3) to (5) of paragraph 1.
- (2) If, while any arrangements are under consideration by the Director under this paragraph, he is informed in accordance with section 39(12)(b) of this Act of any modification of those arrangements, he may, if he thinks fit, decide to vary the matters under consideration so far as is necessary to take account of the modification; and, if he does so, references to those arrangements in sub-paragraph (1)(a) and (b) above shall accordingly be construed as references to those arrangements as modified.
- (3) The Director shall send a copy of any report made by him under this paragraph to the Commission and to every holder of a regional Channel 3 licence.
- (4) Paragraphs 2 to 6 shall have effect in relation to any such report as they have effect in relation to a report made by the Director under paragraph 1.

*Power to obtain information*

- 8 (1) The Director may serve on any person a notice requiring him, at a time and a place specified in the notice—

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- (a) to produce to the Director such documents specified or described in the notice (being documents in the custody or under the control of that person), or
- (b) to furnish him, in a form specified in the notice, with such estimates, returns or other information specified or described in it,
- as he may require for the purpose of making any report under this Schedule.
- (2) A person shall not by virtue of sub-paragraph (1) be compelled—
- (a) to produce any document which he could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session, or
- (b) in complying with any requirement for the furnishing of evidence, to give any information which he could not be compelled to give in evidence in such proceedings.
- (3) In section 85 of the <sup>M12</sup>Fair Trading Act 1973, as amended by the <sup>M13</sup>Companies Act 1989, subsections (6) to (8) (enforcement of notices requiring production of documents) shall apply in relation to a notice under sub-paragraph (1) above as they apply in relation to a notice under subsection (1) of that section, but as if, in subsection (7) of that section, there were substituted “the Director” for the words from “any one” to “the Commission”.
- (4) In that Act, as so amended, section 93B (false or misleading information) shall apply in relation to the furnishing of information to the Director or the MMC in connection with his or their functions under this Schedule as it applies in relation to the furnishing of information as mentioned in subsection (1)(a) or (b) of that section.

#### Marginal Citations

**M12** 1973 c. 41

**M13** 1989 c. 40.

VALID FROM 29/12/2003

#### Enforcement

- <sup>F15</sup>8A (1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 8(1).
- (2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 8(1).



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- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.
- [ Where the defaulter is a partnership constituted under the law of Scotland, the court<sup>F16</sup>(6A) may punish any partner of the defaulter as it would have been able to punish him had he been guilty of contempt of court.]
- (7) In this section “the court”—
- (a) in relation to England and Wales or Northern Ireland, means the High Court, and
  - (b) in relation to Scotland, means the Court of Session.]

#### Textual Amendments

**F15** Sch. 4 paras. 8A-8C inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(j)**

**F16** Sch. 4 para. 8A(6A) inserted (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 14(3)**

VALID FROM 29/12/2003

- <sup>F17</sup>[8B (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 8(1).
- (2) A person who commits an offence under sub-paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

#### Textual Amendments

**F17** Sch. 4 paras. 8A-8C inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(j)**

VALID FROM 29/12/2003

#### *False or misleading information*

- <sup>F18</sup>8C (1) A person commits an offence if—
- (a) he supplies any information to the OFT or the Competition Commission in connection with any of their functions under this Schedule;
  - (b) the information is false or misleading in a material respect; and
  - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (2) A person commits an offence if he—

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(a) supplies any information to another person which he knows to be false or misleading in a material respect; or

(b) recklessly supplies any information to another person which is false or misleading in a material respect;

knowing that the information is to be used for the purpose of supplying information to the OFT or the Competition Commission in connection with any of their functions under this Schedule.

(3) A person who commits an offence under sub-paragraph (1) or (2) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) This paragraph shall not have effect in relation to the supplying of information to the Competition Commission in connection with its functions under any provision of the Enterprise Act 2002 as applied by virtue of paragraph 4A.]

#### **Textual Amendments**

**F18** Sch. 4 paras. 8A-8C inserted (*prosp.*) by 2002 c. 40, ss. 278(1), 279, **Sch. 25 para. 24(9)(j)**

#### *Duty of Director to assist MMC*

9 (1) It shall be the duty of the Director, for the purpose of assisting the MMC in carrying out an investigation on a reference made to them under paragraph 4, to give to the MMC—

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either—

(i) requested by the MMC for that purpose, or

(ii) information which in his opinion it would be appropriate for that purpose to give to the MMC without any such request, and

(b) any other assistance which the MMC may require, and which it is within his power to give, in relation to any such matters;

and the MMC shall, for the purpose of carrying out any such investigation, take account of any information given to them for that purpose under this sub-paragraph.

(2) Sub-paragraph (1) shall not affect the operation of paragraph 4(6).

#### *Interpretation*

10 In this Schedule—

“the Director” means the Director General of Fair Trading; and

“the MMC” means the Monopolies and Mergers Commission.

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## SCHEDULE 5

Section 50.

### SPECIAL PROVISIONS RELATING TO PUBLIC TELETEXT SERVICE

#### *The relevant service*

- 1 In this Schedule “the relevant service” means the teletext service referred to in section 49(2) of this Act.

#### *Applications for licence to provide the relevant service*

- 2 (1) Where any such application as is mentioned in section 50(3) of this Act is made in respect of a licence to provide the relevant service—
- (a) the application shall be accompanied by the applicant’s proposals for providing a service that would comply with the requirements specified in paragraph 3(2) below, and
  - (b) section 50(4) shall have effect as if the reference to section 50(3)(b) or (d) included a reference to paragraph (a) above.
- (2) The Commission shall, when publishing a notice under section 50(1) in respect of the grant of a licence to provide the relevant service, publish with the notice general guidance to applicants for the licence which contains examples of the kinds of material whose inclusion in the service proposed by any such applicant under sub-paragraph (1)(a) above would be likely to result in a finding by the Commission that the service would comply with the requirements specified in paragraph 3(2) below.
- (3) The notice to be published by the Commission under section 50(6) in respect of the applications made in pursuance of such a notice as is mentioned in sub-paragraph (2) above shall include the proposals submitted by each of the applicants under sub-paragraph (1)(a) above.
- (4) The Commission shall also publish in such manner as they consider appropriate a notice—
- (a) inviting representations to be made to them with respect to any matters published by them in accordance with section 50(6)(c) or sub-paragraph (3) above, and
  - (b) specifying the manner in which, and the time by which, any such representations are to be so made.
- (5) The notice referred to in sub-paragraph (4) above shall be published as soon as reasonably practicable after the date specified in the notice under section 50(1) as the closing date for applications for the licence.

#### *Consideration of applications and award of licence*

- 3 (1) Where a person has, in accordance with section 50 of this Act and paragraph 2 above, made an application for a licence to provide the relevant service, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 51(3) and (4) of this Act unless it appears to them that his proposed service would comply with the requirements specified in sub-paragraph (2).
- (2) Those requirements are—

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- (a) that the service includes a sufficient amount of news items which are of high quality and deal with both national and international matters;
  - (b) that the service includes a sufficient amount of information which is of particular interest to persons living within different areas for which the service is provided; and
  - (c) that (taken as a whole) the service includes a sufficient amount of information (other than news) which is calculated to appeal to a wide variety of tastes and interests.
- (3) Section 51(1) shall accordingly have effect in relation to a licence to provide the relevant service as if the reference to the requirements of section 51(1)(a) and (b) included a reference to the requirements specified in sub-paragraph (2) above.
- (4) In deciding whether an applicant's proposed service would comply with those requirements, the Commission shall take into account any representations made to them in pursuance of paragraph 2(4)(b) above.
- (5) Where the Commission have awarded a licence to provide the relevant service to any person in accordance with section 51(3) and (4), the matters to be published by them in accordance with section 17(11)(a) and (12) of this Act (as they have effect in accordance with section 51(3) and (4)) shall include the name of every other applicant in whose case it appeared to them that his proposed service would comply with the requirements specified in sub-paragraph (2) above.

*Conditions requiring licence holder to deliver promised service*

- 4 (1) A licence to provide the relevant service shall include such conditions as appear to the Commission to be appropriate for securing that the service provided under the licence accords with the proposals submitted by the licence holder under paragraph 2(1)(a) above.
- (2) Any conditions imposed in pursuance of sub-paragraph (1) above may be varied by the Commission with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).

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

- 5 (1) Subject to sub-paragraph (2), section 18 of this Act shall apply in relation to a licence to provide the relevant service as it applies in relation to a licence to provide a Channel 3 service.
- (2) In the application of that section in relation to a licence to provide the relevant service—
- (a) the reference in section 18(1) to section 17 shall be construed as a reference to that section as applied by section 51(3) of this Act; and
  - (b) the reference in section 18(4) to section 19(2) to (6) shall be construed as a reference to section 52(2) of this Act.

*Renewal of licence to provide relevant service*

- 6 Section 53(5) of this Act shall have effect in relation to an application for the renewal of a licence to provide the relevant service as if, in addition to the grounds for refusing an application which are specified in paragraphs (a) to (c) of that provision, there were specified the following ground, namely that the Commission

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are not satisfied that the applicant would, if his licence were renewed, provide a service which complied—

- (a) with the conditions included in the licence in pursuance of paragraph 4 above (whether as originally imposed or as varied under sub-paragraph (2) of that paragraph), or
- (b) with the requirements specified in paragraph 3(2) above.

*Additional methods of enforcement of licence to provide relevant service*

- 7 (1) Subject to sub-paragraph (2), sections 40 and 41 of this Act shall apply in relation to a licence to provide the relevant service as they apply in relation to a licence to provide a Channel 3 service.
- (2) In the application of those sections in relation to a licence to provide the relevant service—
  - (a) any reference in section 40(4) to a programme shall be construed as a reference to an item; and
  - (b) section 41 shall have effect with the omission of subsections (1)(a) and (2).

SCHEDULE 6

Section 56.

THE WELSH AUTHORITY: SUPPLEMENTARY PROVISIONS

*Status and capacity*

- 1 (1) The Welsh Authority (in this Schedule referred to as “the Authority”) shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (2) It shall be within the capacity of the Authority as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including the borrowing of money.

*Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Authority so long as he is—
  - (a) a member or employee of the Radio Authority established by this Act;
  - (b) a member or employee of the Broadcasting Complaints Commission; or
  - (c) a member or employee of the Broadcasting Standards Council established by this Act.
- (2) The members of the Authority shall not at any time include—
  - (a) more than one person who is either a governor or an employee of the BBC; or
  - (b) more than one person who is either a member or an employee of the Commission.
- (3) Before appointing a person to be a member of the Authority, the Secretary of State shall satisfy himself that that person will have no such financial or other interest as

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is likely to affect prejudicially the discharge by him of his functions as a member of the Authority; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the Authority that he has no such interest.

- (4) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the Authority shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (3).

#### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Authority shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Authority for more than five years at a time.
- (3) Any member of the Authority may at any time resign his office by notice in writing to the Secretary of State.

#### *Remuneration and pensions of members*

- 4 (1) The Authority may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The Authority may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Authority may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

#### *Disqualification of members of Authority for House of Commons*

- 5 In Part II of Schedule 1 to the <sup>M14</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“Sianel Pedwar Cymru”.

#### **Marginal Citations**

**M14** 1975 c. 24.

#### *Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Authority and the arrangements relating to their meetings shall be such as the Authority may determine.

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- (2) The arrangements may provide for the discharge, under the general direction of the Authority, of any of the Authority's functions by a committee or by one or more of the members or employees of the Authority.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Authority shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Authority, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Authority at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Authority by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Authority in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Authority include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Authority shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

#### *Employees of the Authority*

- 9 (1) The Authority shall appoint a secretary and may appoint such other employees as they may determine.
- (2) If the Authority determine to do so in the case of any of their employees, the Authority shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Authority may determine.
- (3) If any employee of the Authority—
- (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the Authority,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the Authority were service as an employee of the Authority.

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### *Authentication of Authority's seal*

- 10 The application of the seal of the Authority shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

### *Presumption of authenticity of documents issued by Authority*

- 11 Any document purporting to be an instrument issued by the Authority and to be duly executed under the seal of the Authority or to be signed on behalf of the Authority shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

### *Accounts and audit*

- 12 (1) The Authority shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The accounts of the Authority shall be audited by auditors to be appointed by the Authority with the approval of the Secretary of State.
- [<sup>F19</sup>(3) A person shall not be qualified to be appointed as a auditor in pursuance of subparagraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Authority shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Authority; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Authority.

#### **Textual Amendments**

**F19** Sch. 6 para. 12(3) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 77(4)

### *Annual reports*

- 13 (1) As soon as possible after the end of every financial year, the Authority shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Authority) as the Secretary of State may from time to time direct.



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### *Advisory committees*

- 14 The Authority may appoint, or arrange for the assistance of, advisory committees to give advice to them on such matters relating to the Authority's functions as the Authority may determine.

## SCHEDULE 7

Sections 67, 77 and 121.

### QUALIFYING REVENUE: SUPPLEMENTARY PROVISIONS

#### PART I

#### QUALIFYING REVENUE FOR PURPOSES OF PART I OR II OF THIS ACT

##### *Computation of qualifying revenue*

- 1 (1) It shall be the duty of the Commission to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining the qualifying revenue in relation to a person—
- (a) for any accounting period of his, or
  - (b) for any year,
- for the purposes of any provision of Part I or Part II of this Act.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Commission shall consult the Secretary of State and the Treasury.
- (4) The Commission shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

##### *Disputes*

- 2 (1) For the purposes of any provision of Part I or Part II of this Act—
- (a) the amount of the qualifying revenue in relation to any person for any accounting period of his, or (as the case may be) for any year, or
  - (b) the amount of any payment to be made to the Commission by any person in respect of any such revenue, or of an instalment of any such payment,
- shall, in the event of a disagreement between the Commission and that person, be the amount determined by the Commission.
- (2) No determination of the Commission under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

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## PART II

### QUALIFYING REVENUE FOR PURPOSES OF PART III OF THIS ACT

#### *Computation of qualifying revenue*

- 1 (1) It shall be the duty of the Authority to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining the qualifying revenue for any accounting period of a licence holder for the purposes of any provision of Part III of this Act.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Authority shall consult the Secretary of State and the Treasury.
- (4) The Authority shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

#### *Disputes*

- 2 (1) For the purposes of any provision of Part III of this Act—
- (a) the amount of the qualifying revenue for any accounting period of a person, or
  - (b) the amount of any payment to be made to the Authority by any person in respect of any such revenue, or of an instalment of any such payment,
- shall, in the event of a disagreement between the Authority and that person, be the amount determined by the Authority.
- (2) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

## SCHEDULE 8

Section 83.

### THE RADIO AUTHORITY: SUPPLEMENTARY PROVISIONS

#### *Status and capacity*

- 1 (1) The Authority shall be a body corporate.
- (2) The Authority shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.

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- (3) It shall be within the capacity of the Authority as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act, including (subject to sub-paragraph (4)) the borrowing of money.
- (4) The power of the Authority to borrow money (otherwise than under paragraph 13) shall not be exercised by them except with the consent of, or in accordance with a general authority given by, the Secretary of State.

#### *Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Authority so long as he is—
  - (a) a governor or employee of the BBC;
  - (b) a member or employee of the Channel Four Television Corporation established by this Act;
  - (c) a member or employee of the Welsh Authority;
  - (d) a member or employee of the Broadcasting Complaints Commission; or
  - (e) a member or employee of the Broadcasting Standards Council established by this Act.
- (2) Before appointing a person to be a member of the Authority, the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Authority; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the Authority that he has no such interest.
- (3) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the Authority shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (2).

#### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Authority shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Authority for more than five years at a time.
- (3) Any member of the Authority may at any time resign his office by notice in writing to the Secretary of State.

#### *Remuneration and pensions of members*

- 4 (1) The Authority may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The Authority may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.

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- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Authority may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

*Disqualification of members of Authority for House of Commons and Northern Ireland Assembly*

- 5 In Part II of Schedule 1 to the <sup>M15</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Radio Authority” and a corresponding amendment shall be made in Part II of Schedule 1 to the

<sup>M16</sup>

Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M15** 1975 c. 24.

**M16** 1975 c. 25.

*Proceedings*

- 6 (1) Subject to paragraph 7, the quorum of the Authority and the arrangements relating to their meetings shall be such as the Authority may determine.
- (2) The arrangements may provide for the discharge, under the general direction of the Authority, of any of the Authority’s functions by a committee or by one or more of the members or employees of the Authority.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Authority shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
- (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Authority, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Authority at which all of the other members present resolve that the member’s interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Authority by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Authority in order to make a disclosure which he is required to make under this paragraph if he takes

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reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.

- (5) In this paragraph references to a meeting of the Authority include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Authority shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

#### *Employees of the Authority*

- 9 (1) The Authority shall appoint a secretary and may appoint such other employees as they may determine.
- (2) If the Authority determine to do so in the case of any of their employees, the Authority shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Authority may determine.
- (3) If any employee of the Authority—
- (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the Authority,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the Authority were service as an employee of the Authority.

#### *Authentication of Authority's seal*

- 10 The application of the seal of the Authority shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### *Presumption of authenticity of documents issued by Authority*

- 11 Any document purporting to be an instrument issued by the Authority and to be duly executed under the seal of the Authority or to be signed on behalf of the Authority shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

#### *Finances of Authority*

- 12 (1) It shall be the duty of the Authority so to conduct their affairs that their revenues become at the earliest possible date, and continue thereafter, at least sufficient to enable them to meet their obligations and discharge their functions under this Act.
- (2) Any excess of the Authority's revenues for any financial year over the sums required by them for that year for meeting their obligations and discharging their functions under this Act shall be applied by the Authority in such manner as the Secretary of State may direct with the approval of the Treasury and after consultation with the Authority.
- (3) A direction under sub-paragraph (2) may require the whole or any part of any excess of the revenues of the Authority to be paid into the Consolidated Fund.

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### *Advances to Authority*

- 13 (1) For the purpose of—
- (a) furnishing the Authority with working capital, or
  - (b) enabling them to meet any capital expenditure,
- the Secretary of State may, with the consent of the Treasury, make advances to the Authority out of money provided by Parliament.
- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Authority under this paragraph shall not at any time exceed £3 million.
- (3) Any sums advanced under this paragraph shall be repaid to the Secretary of State at such times and by such methods, and interest on those sums shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.

### *Accounts and audit*

- 14 (1) The Authority shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The accounts of the Authority shall be audited by auditors to be appointed by the Authority with the approval of the Secretary of State.
- [<sup>F20</sup>(3) A person shall not be qualified to be appointed as an auditor in pursuance of subparagraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Authority shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the Authority; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the Authority.

#### **Textual Amendments**

**F20** Sch. 8 para. 14(3) substituted (01.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 77(5).

### *Annual reports*

- 15 (1) As soon as possible after the end of every financial year, the Authority shall prepare a general report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement, and shall include such information (including information relating to the financial position of the Authority) as the Secretary of State may from time to time direct.

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### *Advisory committees*

- 16 The Authority may appoint, or arrange for the assistance of, advisory committees to give advice to them on such matters relating to the Authority's functions as the Authority may determine.

## SCHEDULE 9

Section 127.

### SCHEME PROVIDING FOR DIVISION OF ASSETS OF IBA

#### *Preliminary*

- 1 In this Schedule—
- “relevant transferee” shall be construed in accordance with paragraph 2(1) below; and
  - “transfer scheme” means a scheme under this Schedule made either by the IBA under paragraph 2(1) below or by the Secretary of State under paragraph 2(4) below.

#### *Making and modification of transfer scheme*

- 2 (1) The IBA shall make a scheme under this Schedule for the division of all their property, rights and liabilities between—
- (a) the Commission,
  - (b) the Radio Authority, and
  - (c) the nominated company;
- and references in this Schedule to the relevant transferees are references to the bodies specified in paragraphs (a) to (c) above.
- (2) Where such a scheme is made by the IBA, it shall not be capable of coming into force in accordance with section 127(1) of this Act unless it is approved by the Secretary of State.
- (3) Where such a scheme is submitted to the Secretary of State for his approval, he may modify the scheme before approving it.
- (4) If—
- (a) the IBA have not, before such time as the Secretary of State may notify to them as the latest time for the submission of such a scheme, submitted such a scheme for his approval, or
  - (b) the Secretary of State decides not to approve (either with or without modifications) a scheme that has been submitted to him by the IBA,
- the Secretary of State may himself make a scheme for the division of the IBA's property, rights and liabilities between the relevant transferees.
- (5) If, at any time after the Secretary of State has either—
- (a) approved (either with or without modifications) a scheme under this Schedule made by the IBA, or
  - (b) himself made such a scheme,

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but before the scheme has come into force in accordance with section 127(1) of this Act, the Secretary of State considers it appropriate to do so, he may determine that the scheme shall, on its so coming into force, come into force with such modifications as may be specified in his determination; and, in any such case, the scheme shall accordingly, on its coming into force, come into force with those modifications.

- (6) If at any time after a transfer scheme has come into force—
- (a) the Secretary of State considers it appropriate to make an order under this sub-paragraph, and
  - (b) every relevant transferee who would be affected by the order either—
    - (i) (in a case where any such transferee is the nominated company and that company has ceased to be wholly owned by the Crown) has consented to the making of the order, or
    - (ii) (in any other case) has been consulted by the Secretary of State,
 the Secretary of State may by order provide that the scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (7) Any power to modify a transfer scheme which is conferred on the Secretary of State by this paragraph may be so exercised as to make any such provision as could have been made by the scheme, and an order under sub-paragraph (6) above may provide for any of its provisions to have effect as from the coming into force of the scheme to which it relates.
- (8) In determining whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State shall have regard to the need to ensure that the division of property, rights and liabilities between the relevant transferees which is effected under this Schedule allocates property, rights and liabilities to those transferees in such a manner as appears to him to be appropriate—
- (a) in the case of the Commission and the Radio Authority, in the light of the functions conferred on those bodies by this Act; and
  - (b) in the case of the nominated company, with a view to the carrying on by that company of a business consisting of—
    - (i) the provision of broadcasting transmission services and services related to such services, and
    - (ii) the carrying out of research and development work relating to broadcasting.
- (9) It shall be the duty of the IBA and each of the relevant transferees to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on him by this paragraph.
- (10) Nothing in this paragraph shall require a scheme under this Schedule to make provision—
- (a) with respect to any equipment or other asset which the IBA have agreed to dispose of in pursuance of section 132(1) or 133(6) of this Act, or
  - (b) with respect to any liabilities of the IBA which—
    - (i) have not yet become enforceable against the IBA, and
    - (ii) are not specifically and exclusively referable to any particular part or parts of the undertaking of the IBA which is or are transferred



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- in accordance with any such scheme to one or more of the relevant transferees, or
- (c) with respect to any such rights or liabilities as are mentioned in sub-paragraph (11).
- (11) Those rights and liabilities are rights and liabilities acquired by the IBA in connection with the sharing by the IBA and the BBC of the use of facilities (of whatever description) in connection with the transmission of television programmes or local sound broadcasts.

#### *Content of transfer scheme*

- 3 (1) A transfer scheme may—
- (a) define the property, rights and liabilities to be allocated to a particular relevant transferee—
- (i) by specifying or describing the property, rights and liabilities in question,
- (ii) by referring to all the property, rights and liabilities comprised in a specified part of the IBA's undertaking, or
- (iii) partly in the one way and partly in the other;
- (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of two or more relevant transferees;
- (c) impose on any relevant transferee an obligation to enter into such written agreements with, or execute such instruments in favour of, such other relevant transferee as may be specified in the scheme;
- (d) create for any of the relevant transferees an interest in or right over property transferred in accordance with the scheme to any other of those transferees;
- (e) in connection with any provision made by virtue of paragraph (d), make incidental provision as to the interests, rights and liabilities of other persons with respect to the property in question.
- (2) Without prejudice to the generality of sub-paragraph (1)(a), a transfer scheme may, in connection with any transfer to be made in accordance with the scheme, exclude from the transfer any rights and liabilities falling within paragraph 2(11) above and described in the scheme.
- (3) A transfer scheme may also allocate to any of the relevant transferees such property, rights and liabilities to which the IBA may become entitled or subject after the making of the scheme and before the transfer date as may be described in the scheme.
- (4) The property, rights and liabilities of the IBA that are capable of being transferred in accordance with a transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the IBA;
- (b) property situated anywhere in the United Kingdom or elsewhere; and
- (c) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (5) It is hereby declared for the avoidance of doubt that the rights and liabilities capable of being so transferred include rights and liabilities of the IBA under any agreement or arrangement for the payment of pensions, allowances or gratuities.

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- (6) An obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c) shall be enforceable by civil proceedings brought by the other relevant transferee in question for an injunction or interdict or for any other appropriate relief.

*Effect of transfer scheme*

- 4 (1) Where a transfer scheme comes into force on the transfer date, this sub-paragraph shall have effect on that date so as to transfer to each of the relevant transferees, in accordance with the scheme's provisions and without further assurance, such of the property, rights and liabilities of the IBA as are allocated to that transferee by the scheme.
- (2) A transaction of any description which is effected in pursuance of any provision included in a transfer scheme in accordance with this Schedule shall be binding on all persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the IBA or any relevant transferee.
- (3) Where apart from this sub-paragraph any person would have power, in consequence of anything done or likely to be done by or under this Act, to terminate or modify an interest or right which is vested in the IBA at the passing of this Act, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that power shall not be exercisable in relation to the interest or right at any time before its transfer in accordance with the scheme; and
- (b) without prejudice to any other provision of this Schedule, that power shall be exercisable in relation to the interest or right after its transfer only in so far as the scheme provides for it to be transferred subject to the power.
- (4) Where, in consequence of any transfer made in accordance with a transfer scheme, all the property, rights and liabilities comprised in a particular part of the IBA's undertaking are transferred to a relevant transferee—
- (a) the <sup>M17</sup>Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to the transfer, whether or not they would otherwise so apply, and
- (b) that undertaking shall accordingly (whether or not it would otherwise be so regarded) be regarded for the purposes of those Regulations as an undertaking in the nature of a commercial venture.

**Marginal Citations**

**M17** S.I. 1981/1794.

*Third parties affected by transfer scheme*

- 5 (1) This paragraph applies where—
- (a) in consequence of any transfer made in accordance with a transfer scheme, any right or liability of a person (other than the IBA or any relevant transferee) which was enforceable against or by the IBA becomes enforceable against or by one or more relevant transferees; and

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- (b) apart from this Schedule that person's consent or concurrence would have been required for that right or liability to become so enforceable;  
and in this paragraph references to a third party are references to any such person.
- (2) Subject to sub-paragraph (3), the IBA shall take reasonable steps to identify any third party and to notify him of the effect of the transfer in question on any right or liability of his falling within sub-paragraph (1), and of the effect of sub-paragraph (4).
- (3) A transfer scheme may provide that the duties imposed on the IBA by sub-paragraph (2) in relation to a transfer shall be imposed instead on such one of the relevant transferees as may be specified in the scheme.
- (4) Where—
- (a) any right or liability of a third party has become enforceable against or by more than one relevant transferee, and
  - (b) the value of any property or interest of the third party is diminished thereby, such compensation as is just shall be paid to the third party by one or more of the relevant transferees.
- (5) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (4), or as to the person to or by whom it shall be paid, shall be referred to and determined by—
- (a) an arbitrator appointed by the Lord Chancellor; or
  - (b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session.

#### *Supplemental provisions of scheme*

- 6 (1) A transfer scheme may contain supplemental, consequential and transitional provisions for the purposes of, or in connection with, the division effected or any other provision made by the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a transfer scheme may provide—
- (a) that for purposes connected with any transfer made in accordance with the scheme a relevant transferee to whom anything is transferred in accordance with the scheme is to be treated as the same person in law as the IBA;
  - (b) that, so far as may be necessary for the purposes of or in connection with any such transfer, agreements made, transactions effected and other things done by or in relation to the IBA are to be treated as made, effected or done by or in relation to the relevant transferee to whom the transfer is made;
  - (c) that, so far as may be necessary for the purposes of or in connection with any such transfer, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the IBA are to have effect with such modifications as are specified in the scheme;
  - (d) that proceedings commenced by or against the IBA are to be continued by or against such one of the relevant transferees as the scheme may provide in relation to any circumstances specified or described in it;
  - (e) that the effect of any transfer made in accordance with the scheme in relation to contracts of employment with the IBA is not to be to terminate any such contracts but is to be that periods of employment with the IBA are to count

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for all purposes as periods of employment with the relevant transferee to whom the transfer is made;

- (f) that disputes as to the effect of the scheme between any of the relevant transferees are to be referred to such arbitration as may be specified in or determined under the scheme;
- (g) that determinations on such arbitrations, and certificates given jointly by all or any two of the relevant transferees as to the effect of the scheme as between the transferees concerned, are to be conclusive for all purposes.

*Vesting of IBA's property after coming into force of scheme*

- 7 (1) A transfer scheme may provide for the imposition of duties—
  - (a) on the IBA, and
  - (b) on all or any of the relevant transferees,
 to take all such steps as may be requisite to secure that the vesting in any of those transferees, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a transfer scheme may require the IBA to comply with any directions of any of the relevant transferees in performing any duty imposed on the IBA by virtue of a provision included in the scheme by virtue of sub-paragraph (1).
- (3) A transfer scheme may provide that, until the vesting of any foreign property, right or liability of the IBA in a relevant transferee is effective under the relevant foreign law, it shall be the duty of the IBA to hold that property or right for the benefit of, or to discharge that liability on behalf of, that transferee.
- (4) Nothing in any provision included in a transfer scheme by virtue of this paragraph shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in a relevant transferee, by virtue of the scheme, of any foreign property, right or liability.
- (5) The IBA shall have all such powers as may be requisite for the performance of any duty imposed on them by any provision included in a transfer scheme by virtue of this paragraph; but such a scheme may require a relevant transferee to act on behalf of the IBA (so far as possible) for the purposes of, or in connection with, the performance of any such duty in relation to any property, right or liability vested in the transferee by virtue of the scheme.
- (6) A transfer scheme may provide that any foreign property, rights or liabilities that are acquired or incurred by the IBA after the scheme comes into force are immediately to become property, rights or liabilities of such one of the relevant transferees as is specified in the scheme; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the IBA when the scheme comes into force.
- (7) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

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- (8) Any expenses incurred by the IBA in consequence of any provision included in a transfer scheme by virtue of this paragraph shall be met by the relevant transferees in such proportions as may be determined by or under the scheme.

*Certificate of Secretary of State as to vesting of property etc.*

- 8 (1) Subject to sub-paragraph (2), a certificate issued by the Secretary of State to the effect that any property, right or liability of the IBA vested at a particular time by virtue of this Schedule in one or more of the relevant transferees shall be conclusive evidence of the matters stated in the certificate.
- (2) Nothing in any such certificate shall prejudice the operation of a certificate issued by virtue of a provision included in a transfer scheme by virtue of paragraph 6(2)(g) above.

*Power of Secretary of State to control division of IBA's pension fund*

- 9 (1) If the Secretary of State so determines, the trustees of the Independent Broadcasting Authority Staff Pensions Plan shall refer to him, before such date as he may specify, the division and distribution of the relevant assets which is to be made by them for the purpose of making a transfer payment to a pension scheme established by the nominated company for its employees; and, if he does so, any such division and distribution of those assets and liabilities shall not be made by the trustees except—
- (a) with his consent, or
  - (b) in accordance with an order made by him under sub-paragraph (2).
- (2) Where any such division and distribution is referred to the Secretary of State under sub-paragraph (1), he may by order direct that the relevant assets shall be divided and distributed by the trustees in such manner, and at such time, as is specified in the order; and any provision of—
- (a) the Plan referred to in sub-paragraph (1), or
  - (b) any enactment relating to occupational pension schemes, including any enactment relating to transfer values,
- shall not have effect to the extent that it is inconsistent with the division and distribution of those assets in accordance with any such order.
- (3) When making an order under sub-paragraph (2) the Secretary of State shall have regard to the interests of all classes of persons who are for the time being beneficiaries or potential beneficiaries under the Plan referred to in sub-paragraph (1).
- (4) In this paragraph—
- “the relevant assets” means the assets held by or on behalf of the trustees; and
- “the trustees” means the trustees of the Plan referred to in sub-paragraph (1).
- (5) An order under sub-paragraph (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Discharge by IBA of contingent etc. liabilities*

- 10 (1) This paragraph applies to any liabilities to which the IBA are subject on or after the transfer date, being liabilities which—

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- (a) had not become enforceable against the IBA before that date, and
  - (b) are not specifically and exclusively referable to any particular part or parts of the undertaking of the IBA which has or have been transferred in accordance with a transfer scheme to one or more of the relevant transferees.
- (2) Any sums required by the IBA for the purpose of discharging any liabilities to which this paragraph applies shall be paid to them by the Secretary of State out of money provided by Parliament.
- (3) Any payments made to the IBA under sub-paragraph (2) may be so made subject to such conditions as the Secretary of State may determine with the approval of the Treasury.

*Final accounts and annual report of IBA*

- 11 (1) The IBA shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in subsection (1) of section 42 of the Act 1981 (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last statement of accounts was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not; and that section shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that subsection in respect of that period.
- (2) The IBA shall, as soon as possible after the transfer date, prepare and transmit to the Secretary of State, in accordance with section 43 of that Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the references to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1) above.
- (4) The Secretary of State shall lay copies of any such report before each House of Parliament.
- (5) Any expenses incurred by the IBA under this paragraph shall be met by such one or more of the relevant transferees, and (if more than one) in such proportions, as may be determined by or under a transfer scheme.

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## SCHEDULE 10

Section 128.

### SUPPLEMENTARY PROVISIONS RELATING TO DISSOLUTION OF CABLE AUTHORITY

#### *Provisions as to vesting of property etc. of Cable Authority*

- 1 (1) Sub-paragraph (2) below shall have effect for the purposes of, or in connection with, the vesting in the Commission by virtue of section 128(1) of this Act of property, rights or liabilities of the Cable Authority.
- (2) Any agreement made, transaction effected or other thing done by or in relation to the Cable Authority which is in force or effective immediately before the transfer date shall have effect as from that date as if made, effected or done by or in relation to the Commission, in all respects as if the Commission were the same person, in law, as the Cable Authority; and accordingly references to the Cable Authority—
- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument,
  - (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority, and
  - (c) in any other document whatever (other than an enactment),
- shall be taken as from the transfer date as referring to the Commission.
- 2 (1) Where immediately before the transfer date there is in force an agreement which—
- (a) confers or imposes on the Cable Authority any rights or liabilities which vest in the Commission by virtue of section 128(1), and
  - (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of the Cable Authority,
- the agreement shall have effect, in relation to anything falling to be done on or after the transfer date, as if for that reference there were substituted a reference to such person as the Commission may appoint or, in default of appointment, to the member or employee of the Commission who corresponds as nearly as possible to the member or officer of the Authority in question.
- (2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

#### *Transfer of employees*

- 3 (1) It is hereby declared for the avoidance of doubt that—
- (a) the effect of section 128(1) in relation to any contract of employment with the Cable Authority in force immediately before the transfer date is merely to modify that contract (as from that date) by substituting the Commission as the employer (and not to terminate the contract or vary it in any other way); and
  - (b) that provision is effective to vest the rights and liabilities of the Cable Authority under any agreement or arrangement for the payment of pensions, allowances or gratuities in the Commission along with all the other rights and liabilities of the Authority.
- (2) Accordingly, for the purposes of any such agreement or arrangement as it has effect as from the transfer date, any period of employment with the Cable Authority shall count as employment with the Commission.

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- (3) The Transfer of Undertakings <sup>M18</sup>(Protection of Employment) Regulations 1981 shall apply to the transfer to the Commission, by virtue of section 128(1), of the undertaking of the Cable Authority, whether or not they would otherwise so apply; and that undertaking shall accordingly (whether or not it would otherwise be so regarded) be regarded for the purposes of those Regulations as an undertaking in the nature of a commercial venture.

**Marginal Citations**

**M18** S.I. 1981/1794.

*Final accounts and annual report of Cable Authority*

- 4 (1) The Cable Authority shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in subsection (1) of section 20 of the <sup>M19</sup>Cable and Broadcasting Act 1984 (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last statement of accounts was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not; and that section shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that subsection in respect of that period.
- (2) The Cable Authority shall, as soon as possible after the transfer date, prepare and transmit to the Secretary of State, in accordance with section 21 of that Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the references to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1) above.
- (4) The Secretary of State shall lay copies of any such report before each House of Parliament.
- (5) Any expenses incurred by the Cable Authority under this paragraph shall be met by the Commission.

**Marginal Citations**

**M19** 1984 c. 46.



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## SCHEDULE 11

Section 129.

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

#### PART I

##### GENERAL

In this Schedule—

“the <sup>M20</sup>1981 Act” means the Broadcasting Act 1981;

“the Authority” means the Radio Authority;

“Channel 4” means the additional broadcasting service referred to in section 10(1) of the 1981 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, and “on Channel 4” means in the said service;

“the interim period” means the period referred to in paragraph 1(1) in Part II of this Schedule;

“local licence” and “local service” have the same meaning as in Part III of this Act;

“S4C” means the television broadcasting service referred to in section 57(1) of this Act, and “on S4C” means in that service.

#### Marginal Citations

M20 1981 c. 68.

#### Marginal Citations

M20 1981 c. 68.

#### 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.

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- (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.
- (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,

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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—

- (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

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(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.

*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—

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- (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).

- (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

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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.
- (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.

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- (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.
- (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.

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- (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 sub-paragraph (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 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.



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- (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.
- (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.

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### *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.

## PART III

### REPLACEMENT OF DBS CONTRACTS BY LICENCES UNDER PART I

#### *Replacement of DBS programme contract by domestic satellite licence*

- 1 (1) Where any contract which, by virtue of paragraph 2(1) in Part II of this Schedule, has effect as a contract between the Commission and a DBS programme contractor is effective immediately before the relevant date—
- (a) the contract shall cease to have effect on that date; but
  - (b) the contractor shall be granted by the Commission as from that date a licence under Part I of this Act to provide a domestic satellite service which, in accordance with section 44(2) of this Act, authorises the provision of a multichannel service on the frequencies on which any DBS services consisting of programmes provided by him under the contract were being provided by the Commission down to that date.
- (2) In sub-paragraph (1) “multichannel service” means a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies.
- (3) Any licence granted in pursuance of sub-paragraph (1) shall be so granted notwithstanding anything in sections 15 to 17 of this Act (as applied by section 44 of this Act); and nothing in section 19 of this Act (as so applied) shall apply to any such licence until such time (if any) as it is renewed in accordance with sub-paragraph (4).
- (4) Section 20 of this Act (as so applied) shall apply to any such licence as if—
- (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period beginning with the relevant date and ending with the date on which the contract referred to in sub-paragraph (1) would have expired apart from that sub-paragraph;

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- (b) in subsection (6)(b), the words from “a different” to “as” were omitted; and
  - (c) in subsection (9)(a), the reference to any conditions included in the licence in pursuance of section 19 were a reference to any conditions so included in accordance with sub-paragraph (5) below.
- (5) Where any such licence is to be renewed in accordance with sub-paragraph (4), the Commission shall (notwithstanding section 3(4) of this Act) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (3).
- (6) Section 3(3) shall, in its application in relation to any such licence, have effect—
- (a) with the omission of paragraph (a), and
  - (b) as if the reference to Part I of this Act included a reference to this Part of this Schedule.
- (7) Section 41 shall have effect in relation to any such licence with the omission of subsection (2); and the maximum amount which the holder of any such licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section shall instead be the sum for the time being specified in section 45(6).
- (8) Except as provided in the preceding provisions of this paragraph, Part I of this Act applies to a licence granted in pursuance of this paragraph as it applies to any other licence to provide a domestic satellite service.
- (9) In this Part of this Schedule—
- (a) “the relevant date” means the day immediately following the end of the interim period; and
  - (b) “additional services licence” and “domestic satellite licence” have the same meaning as in Part I of this Act.

*Power to require licence holder to make additional payments under 1981 Act*

- 2 (1) The Secretary of State may by order provide for such of the provisions of sections 32 to 35 of, and Schedule 4 to, the 1981 Act as are specified in the order to have effect (subject to such modifications as are so specified)—
- (a) in relation to the holder of any licence granted in pursuance of paragraph 1 above, or
  - (b) in relation to any such licence,
- with a view to making provision for and in connection with the making by the holder of any such licence to the Commission of payments determined in accordance with section 32 of that Act in respect of profits or advertising revenue (or both) within the meaning of that section.
- (2) Any such order shall be so framed as to secure that, subject to such modifications as the Secretary of State considers appropriate and to sub-paragraph (4), the provisions of the 1981 Act applied by the order as mentioned in sub-paragraph (1)(a) and (b) so apply in a similar way to that in which they applied immediately before the relevant date in relation to a DBS programme contractor or (as the case may be) in relation to the contract of any such contractor.
- (3) Without prejudice to the generality of sub-paragraph (2), any such order shall provide for any excess of a DBS programme contractor's relevant expenditure over his

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relevant income to be carried forward and treated as relevant expenditure for the purpose of computing his profits as the holder of a licence granted in pursuance of paragraph 1 above.

Expressions used in this sub-paragraph which are also used in Schedule 4 to the 1981 Act have the same meaning as in that Schedule.

- (4) The power of the Secretary of State to make an order under subsection (8) of section 32 of the 1981 Act shall include power to make an order amending any of the provisions of subsections (4) and (5) of that section in so far as they have effect, by virtue of sub-paragraph (1), in relation to the holder of a licence granted in pursuance of paragraph 1 above.
- (5) Where an order under sub-paragraph (1) comes into force at any time after the relevant date, the Commission shall (notwithstanding section 3(4) of this Act) by notice served on the licence holder vary any licence granted in pursuance of paragraph 1 above by including in it such conditions as appear to them to be necessary or expedient in consequence of the order.
- (6) Nothing in any such order shall impose on the holder of any such licence any liability to make any payment in respect of any time when any conditions included in the licence in accordance with paragraph 1(5) above are in force.
- (7) An order shall not be made by the Secretary of State under sub-paragraph (1) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

*Replacement of DBS teletext contract by additional services licence*

- 3 (1) Where any contract which, by virtue of paragraph 2(1) in Part II of this Schedule, has effect as a contract between the Commission and a DBS teletext contractor is effective immediately before the relevant date—
  - (a) the contract shall cease to have effect on that date; but
  - (b) the contractor shall be granted by the Commission as from that date an additional services licence under Part I of this Act which allocates for use under the licence all of the spare capacity within the frequencies on which any DBS services consisting of programmes provided by him as a DBS programme contractor were provided by the Commission down to that date.
- (2) Any such licence shall be so granted notwithstanding anything in sections 50 and 51 of this Act; and nothing in section 52 of this Act shall apply to any such licence until such time (if any) as it is renewed in accordance with sub-paragraph (3).
- (3) Section 53 of this Act shall apply to any such licence as if—
  - (a) in subsection (1)(a), the reference to a period of ten years were a reference to the period beginning with the relevant date and ending with the date on which any contract to which paragraph 1(1) above applies and to which the DBS teletext contractor was a party immediately before the relevant date would have expired apart from that provision;
  - (b) subsection (3) were omitted;
  - (c) in subsection (5), paragraph (a) were omitted;
  - (d) in subsection (7)(b), the words from “a different” to “as” were omitted; and

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- (e) in subsection (10), the reference to any conditions included in the licence in pursuance of section 52 were a reference to any conditions so included in accordance with sub-paragraph (4) below.
- (4) Where any such licence is to be renewed in accordance with sub-paragraph (3), the Commission shall (notwithstanding section 3(4) of this Act) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (2).
- (5) Section 3(3) shall, in its application in relation to any such licence, have effect—
  - (a) with the omission of paragraph (a), and
  - (b) as if the reference to Part I of this Act included a reference to this Part of this Schedule.
- (6) Section 55 shall have effect in relation to any such licence with the omission of subsection (2); and the maximum amount which the holder of any such licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1) of that section shall instead be the sum for the time being specified in section 45(6).
- (7) In sub-paragraph (1)(b) above the reference to spare capacity within the frequencies referred to in that provision includes a reference to spare capacity within those frequencies which (not being spare capacity within the signals carrying a television broadcasting service) is not spare capacity within the meaning of Part I of this Act; and references in that Part of this Act (however expressed) to the spare capacity authorised to be used under an additional services licence shall, in relation to any such licence as is mentioned in sub-paragraph (1)(b), accordingly be construed as including a reference to spare capacity within those frequencies which is not spare capacity within the meaning of that Part of this Act.
- (8) Except as provided in the preceding provisions of this paragraph, Part I of this Act applies to a licence granted in pursuance of this paragraph as it applies to any other additional services licence.

#### PART IV

##### SOUND BROADCASTING SERVICES TO BE PROVIDED BY RADIO AUTHORITY

*Certain local sound broadcasting services of IBA to be provided by Radio Authority as from transfer date*

- 1 (1) So long as any contracts for the provision of local sound broadcasts continue in force on and after the transfer date by virtue of paragraph 2(1) below, the Authority shall provide, in accordance with this Part of this Schedule, local sound broadcasting services consisting in the broadcasting of programmes provided by the programme contractors under those contracts.
- (2) The services provided by the Authority as mentioned in sub-paragraph (1) shall be of high quality both as to the transmission and as to the matter transmitted, and shall be provided for the localities in the United Kingdom for which the programmes in question are to be provided by the programme contractors under their contracts.
- (3) As from the transfer date the following provisions of the 1981 Act, namely—

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- (a) section 2(2),
- (b) sections 3 to 9,
- (c) sections 28 and 29, and
- (d) Schedule 2,

shall have effect in connection with the provision of those services by the Authority as they had effect, immediately before the transfer date, in connection with the provision of local sound broadcasting 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 Authority; 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 Authority as mentioned in sub-paragraph (1) above.

(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 Authority determine that the following prohibition is not to apply) none of the broadcasting services provided by the Authority 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 Authority 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 Authority by notice in writing to direct any programme contractor specified in the notice—

- (a) to do, or not to do, that thing, or

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- (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 (6) of paragraph 2 below, the Authority 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).

*Preservation of certain local sound broadcasting contracts*

- 2 (1) Where—
- (a) the IBA has, at any time before the transfer date, entered into a contract with a programme contractor for the provision by the contractor of local sound broadcasts in any locality, and
  - (b) the contract is effective immediately before that date,
- then, unless the contract is one to which paragraph 2 in Part V of this Schedule applies (and subject to paragraph 1 in that Part)—
- (i) 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 Authority and that contractor and any other party to it, and
  - (ii) 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 Authority.
- (2) Section 2(3) of the 1981 Act shall have effect in relation to the programmes broadcast by the Authority in accordance with paragraph 1(1) above as if—
- (a) any reference in that subsection to the IBA were a reference to the Authority; and
  - (b) the reference in that subsection to any such contracts as are there mentioned were a reference to contracts which continue in force by virtue of sub-paragraph (1) above.
- (3) As from the transfer date 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 which continues in force by virtue of sub-paragraph (1), or (as the case may be) in relation to the programme contractor under any such contract, subject to the modifications specified in sub-paragraph (4).
- (4) The modifications of the provisions specified in sub-paragraph (3) 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 Authority;
  - (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 Authority as mentioned in paragraph 1(1) above;

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- (c) section 22 shall have effect as if any reference to the programmes supplied to the IBA were a reference to the programmes supplied for broadcasting in one of those services; and
  - (d) section 32(2)(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 8 to the Broadcasting Act 1990 in relation to that part ”.
- (5) The Authority shall do all that they can to secure that, so long as any contract continues in force by virtue of sub-paragraph (1), neither the programme contractor under the contract nor any associate of his—
- (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 locality for which local sound broadcasts are to be provided under the programme contractor’s contract; and this sub-paragraph shall be construed in accordance with Part I of Schedule 2 to this Act.
- (6) The Authority may make such variations of a contract which continues in force by virtue of sub-paragraph (1) as appear to them to be appropriate in consequence of any of the provisions of this Part of this Schedule.

*Delivery of programmes by means of local delivery services*

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

*Provisions relating to Broadcasting Complaints Commission*

- 4 (1) Part V of this Act shall have effect as if—
- (a) section 143(2) of this Act included a reference to any sound programme broadcast by the Authority in accordance with this Part of this Schedule; and
  - (b) (subject to sub-paragraph (2)) the Authority were, in relation to the provision by them of local sound broadcasting services in accordance with this Part of this Schedule, a broadcasting body within the meaning of that Part of this Act.
- (2) Sub-paragraph (1)(b) shall not have effect for the purposes of section 145(5) of this Act; and the Authority shall make such variations of any contract which continues in force by virtue of paragraph 2(1) above 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 Authority in accordance with this Part of this Schedule, to retain a recording of that programme for the period of 42 days beginning with the broadcast,
    - (ii) if requested to do so by the Authority for the purpose of enabling them to comply with any requirement imposed on them in pursuance



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- 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 Authority 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.
- (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 period during which the Authority provide local sound broadcasting services in accordance with this Part of this Schedule, the Secretary of State shall notify to the Authority the sum which he considers to be the appropriate contribution by that body, in respect of the programme contractors under contracts which continue in force by virtue of paragraph 2(1) above, towards the expenses of the BCC; and the Authority 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 period referred to in sub-paragraph (3) above as if the reference to the BBC or the Welsh Authority included a reference to the Authority.
- (5) In this paragraph “the BCC” means the Broadcasting Complaints Commission.

*Provisions relating to Broadcasting Standards Council*

- 5 Part VI of this Act shall have effect as if—
- (a) section 152(2) of this Act included a reference to any sound programme broadcast by the Authority in accordance with this Part of this Schedule; and
- (b) the Authority were, in relation to the provision by them of local sound broadcasting services in accordance with this Part of this Schedule, a broadcasting body within the meaning of that Part of this Act.

*Supplementary provisions*

- 6 (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 as from the transfer date in accordance with this Part of this Schedule, and
- (b) in connection with any of the IBA’s local sound broadcasting services which are to be provided by the Authority as from that date in accordance with paragraph 1(1) above,
- shall, if in force or effective immediately before that date, have effect as from that date for the relevant purposes as if drawn up, given or done by or in relation to the Authority.
- (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 Authority.

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- (3) As from that date sections 61 and 62 of the 1981 Act shall have effect for the relevant purposes as if any reference to the IBA were a reference to the Authority.
- (4) In this paragraph “the relevant purposes” means the purposes of the 1981 Act as it has effect as from the transfer date in accordance with this Part of this Schedule.

## PART V

### REPLACEMENT OF PROGRAMME CONTRACTS BY LOCAL LICENCES

#### *Replacement of contracts to which paragraph 2(1) in Part IV applies by local licences*

- 1 (1) The Authority may, if the programme contractor under a relevant contract so requests—
  - (a) determine the contract as from any time falling on or after the transfer date; and
  - (b) subject to paragraph 3(2) below, grant to the programme contractor as from that time a licence to provide a local service for the locality in which local sound broadcasts were to be provided by him under the contract.
- (2) In sub-paragraph (1) “relevant contract” means a contract which (apart from that sub-paragraph) would continue in force by virtue of paragraph 2(1) in Part IV of this Schedule.
- (3) A licence granted in pursuance of sub-paragraph (1) shall (subject to the provisions of Part III of this Act) continue in force for such period as the Authority may determine, except that the licence shall not expire—
  - (a) before the date on which the contract referred to in that sub-paragraph would have expired if it had not been determined under that sub-paragraph, or
  - (b) later than 31st December 1996 or the date which falls three years after the date referred to in paragraph (a), whichever is the earlier.

#### *Replacement by local licences of certain contracts for the provision of local sound broadcasts in localities in which such broadcasts were already provided*

- 2 (1) Any contract which—
  - (a) the IBA has, at any time on or after 1st September 1989, entered into with a programme contractor for the provision by the contractor of local sound broadcasts in a locality comprised in the locality in which such broadcasts were for the time being to be provided by another programme contractor under a contract entered into before that time, and
  - (b) is effective immediately before the transfer date,
 shall cease to have effect on that date; but, if the first-mentioned programme contractor so requests at any time before that date, the Authority may, subject to paragraph 3(2) below, grant to him as from that date a licence to provide a local service for that locality.
- (2) A licence granted in pursuance of sub-paragraph (1) shall (subject to the provisions of Part III of this Act) continue in force until 31st December 1994.

*Status: Point in time view as at 06/05/1992.*

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*Common provisions applying to licences granted  
in pursuance of paragraph 1(1) or 2(1) above*

- 3
- (1) A request for the grant of a licence which is made to the Authority by any person in pursuance of paragraph 1(1) or 2(1) above must be in writing and accompanied by—
    - (a) his proposals for providing a service that would cater for the tastes and interests of persons living in the locality for which it would be provided or for any particular tastes and interests of such persons; and
    - (b) such information as the Authority may reasonably require as to his present financial position and his projected financial position during the period for which the licence would be in force.
  - (2) The Authority shall not grant a licence to any person in pursuance of paragraph 1(1) or 2(1) above unless they are satisfied that the service proposed to be provided by that person would cater for the tastes and interests of persons living in the locality for which it would be provided or for any particular tastes and interests of such persons.
  - (3) Section 104 of this Act shall not apply in relation to the grant of any such licence.
  - (4) Section 106(1) of this Act shall apply to any such licence as if for “when making his application” there were substituted “ in pursuance of paragraph 3(1) in Part V of Schedule 11 ”.
  - (5) In section 86(4) of this Act the reference to Part III of this Act shall include a reference to this Part of this Schedule.
  - (6) Except as provided in the preceding provisions of this paragraph, Part III of this Act applies to a licence granted in pursuance of paragraph 1(1) or 2(1) above as it applies to any other local licence granted under that Part.

*Saving for liabilities under terminated contracts*

- 4
- (1) Where the contract of a programme contractor is terminated by the Authority under this Part of this Schedule, the termination of that contract shall not affect any liability of his which has accrued under or by virtue of the contract before its termination.
  - (2) Where any such contract is so terminated but the programme contractor is granted a local licence as from the date of its termination, any agreement—
    - (a) made before that date between the contractor and any other person, and
    - (b) framed (whether expressly or by implication) by reference to the contract or to the contractor's status as a programme contractor,shall (unless it expressly provides otherwise) have effect as from that date with such modifications as are necessary to take account of the replacement of the contract by the licence or of the contractor's new status as the holder of the licence (as the case may require).
  - (3) References in sub-paragraph (2) to an agreement include references—
    - (a) to an oral agreement, and
    - (b) to a deed, bond or other instrument.

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## SCHEDULE 12

Section 134.

### TRANSITIONAL PROVISIONS RELATING TO EXISTING CABLE SERVICES

#### PART I

##### GENERAL

- 1 (1) In this Schedule—
- “the 1984 Act” means the <sup>M21</sup>Cable and Broadcasting Act 1984;
- “diffusion service” and “prescribed diffusion service” have the same meaning as in Part I of the 1984 Act;
- “local delivery licence” and “local delivery service” have the same meaning as in Part II of this Act;
- and in Part III of this Schedule “relevant licence” means a licence to provide a prescribed or other diffusion service in force by virtue of paragraph 1, 3, 5 or 8 in Part II of this Schedule.
- (2) Any order which, immediately before the transfer date, is in force under section 2(3) of the 1984 Act (meaning of “cable programme service” etc.) shall continue in force on and after that date for the purposes of the definition of “prescribed diffusion service” applied by sub-paragraph (1).

#### Marginal Citations

**M21** 1984 c. 46.

- 2 This Schedule applies to a licence granted under section 58 of the <sup>M22</sup>Telecommunications Act 1984 (power of Secretary of State to license cable services) as it applies to one granted under section 4 of the <sup>M23</sup>Cable and Broadcasting Act 1984 (power of Cable Authority to license such services).

#### Marginal Citations

**M22** 1984 c. 12.

**M23** 1984 c. 46.

#### PART II

##### LICENSING OF EXISTING CABLE SERVICES

##### *Prescribed diffusion services: continuation in force of existing licences*

- 1 (1) Subject to paragraph 2 below, any licence to provide a prescribed diffusion service which is in force under Part I of the 1984 Act immediately before the transfer date shall, notwithstanding any repeals made by this Act, continue in force (subject to and in accordance with the provisions of this Schedule) for the remainder of the period specified in the licence.

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- (2) Where any licence continues in force by virtue of sub-paragraph (1), any conditions which—
  - (a) were included in it in pursuance of any provision of the 1984 Act, and
  - (b) were in force immediately before the transfer date,shall similarly continue in force (subject to the provisions of this Schedule), but any reference in the licence to the Cable Authority shall be construed, in relation to any time falling on or after that date, as a reference to the Commission.
- (3) Without prejudice to the generality of paragraph 2(4) in Part III of this Schedule, the Commission may, in accordance with that provision, make such variations of a licence which continues in force by virtue of sub-paragraph (1) above as appear to them to be appropriate in consequence of any of the provisions of this Schedule.

*Prescribed diffusion services: replacement of cable licences by local delivery licences*

- 2 (1) Where—
  - (a) any person is the holder of a licence to provide a prescribed diffusion service, being a licence to which paragraph 1(1) above applies (“the existing licence”), and
  - (b) the closing date for the making of applications for the licence under section 6 of the 1984 Act fell before 7th November 1988,that person may, within the period of six months beginning with the transfer date, request the Commission to grant him a licence under Part II of this Act to provide a local delivery service for the area in which the prescribed diffusion service is authorised to be provided under the existing licence.
- (2) Where any request is duly made to them under sub-paragraph (1), the Commission shall (notwithstanding anything in sections 74 to 76 of this Act) grant the licence applied for; and, on the coming into force of that licence, the existing licence shall cease to have effect.
- (3) A local delivery licence granted in pursuance of this paragraph may authorise the licensed service to be provided by wireless telegraphy to such extent as is specified in the licence.
- (4) Nothing in section 77 of this Act shall apply to such a local delivery licence until such time (if any) as it is renewed in accordance with sub-paragraph (5).
- (5) Section 78 of this Act shall apply to such a local delivery licence as if—
  - (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period of fifteen years beginning with the date of the coming into force of the existing licence;
  - (b) in subsection (4), paragraph (b) were omitted;
  - (c) subsection (5) were omitted;
  - (d) in subsection (6)(b), the words from “a different” to “as” were omitted; and
  - (e) in subsection (9), the reference to any conditions included in the licence in pursuance of section 77 were a reference to any conditions so included in accordance with sub-paragraph (6) below.
- (6) Where such a local delivery licence is to be renewed in accordance with sub-paragraph (5), the Commission shall (notwithstanding section 3(4) of this Act, as applied by section 73(3)) by notice served on the licence holder vary the licence, as

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from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (4).

- (7) Section 3(3) of this Act shall, in its application (in accordance with section 73(3)) to a local delivery licence granted in pursuance of this paragraph, have effect as if the reference to Part I of this Act included a reference to this Part of this Schedule.
- (8) Section 81(3) and (4) of this Act shall not apply in relation to a local delivery licence granted in pursuance of this paragraph.
- (9) Except as provided in the preceding provisions of this paragraph, Part II of this Act applies to a local delivery licence granted in pursuance of this paragraph as it applies to any other such licence granted under that Part.

*Prescribed diffusion services: grant of new licences to provide existing services*

- 3 (1) The Commission may on or after the transfer date grant a licence to provide a prescribed diffusion service (“the new service”) if—
  - (a) the new service would be authorised to be provided in the same area as that in which a prescribed diffusion service (“the existing service”) is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies;
  - (b) the licence to provide the new service would come into force on the expiry of the licence to provide the existing service;
  - (c) the applicant for the licence to provide the new service is the holder of the licence to provide the existing service; and
  - (d) after the expiry of the latter licence there will remain in force under Part II of the <sup>M24</sup>Telecommunications Act 1984 a licence which authorises the running of the telecommunication system by means of which the existing service is provided.
- (2) A licence granted under this paragraph shall be in writing and (subject to the provisions of this Schedule) shall continue in force for such period not exceeding eight years as may be specified in the licence.
- (3) Any such licence may include—
  - (a) such conditions as appear to the Commission to be requisite having regard to the duties imposed on them by virtue of this Schedule;
  - (b) conditions requiring the rendering to the Commission of a payment on the grant of the licence or payments during the currency of the licence (or both) of such amount or amounts as may be determined by or under the licence; and
  - (c) conditions requiring the holder of the licence to furnish to the Commission, in such manner and at such times as they may reasonably require, such information as they may require for the purpose of exercising the functions conferred on them by virtue of this Schedule.
- (4) Without prejudice to the generality of paragraph (a) of sub-paragraph (3), conditions included in a licence by virtue of that paragraph may require the holder of the licence—
  - (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified; or

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- (b) except in so far as the Commission 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.
- (5) Any application for the grant of a licence under this paragraph must be in writing; and in deciding whether to grant such a licence the Commission shall take into account all matters appearing to them to be relevant.
- (6) No person shall, in connection with a particular licence to which paragraph 1(1) above applies, be granted both a licence granted in pursuance of this paragraph and a licence granted in pursuance of paragraph 4 below; and that paragraph shall have effect subject to this sub-paragraph.

#### Marginal Citations

M24 1984 c. 12.

*Prescribed diffusion services: cable licences to be succeeded on their expiry by local delivery licences*

- 4 (1) Subject to the following provisions of this paragraph, a person who is the holder of a licence to provide a prescribed diffusion service, being a licence to which paragraph 1(1) above applies (“the existing licence”), may apply to the Commission for the grant, as from the date on which the existing licence is due to expire (“the expiry date”), of a licence under Part II of this Act to provide a local delivery service for the area in which the prescribed diffusion service is authorised to be provided under the existing licence.
- (2) An application under sub-paragraph (1)—
  - (a) may be made by the holder of the existing licence not earlier than five years before the expiry date and not later than the relevant date; and
  - (b) must be in writing and specify—
    - (i) the area which would be covered by the applicant’s proposed local delivery service, and
    - (ii) the technical means by which that service would be provided.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate but not beyond that date.
- (4) In sub-paragraphs (2) and (3) “the relevant date” means the date which the Commission determine to be that by which they would need to publish a notice under section 74 of this Act if they were to grant, as from the expiry date, such a licence under Part II of this Act as is mentioned in sub-paragraph (1).
- (5) Notwithstanding anything in sections 74 to 76 of this Act, where an application under sub-paragraph (1) has been duly made to the Commission, they may only refuse the application if—
  - (a) they propose to grant, as a replacement for the existing licence, a local delivery licence authorising the provision of a local delivery service for an area which would be different from that in which the applicant’s service is authorised to be provided under the existing licence (“the franchise area”); or

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- (b) the applicant is not, at the time when he makes his application, providing a prescribed diffusion service throughout the whole of the franchise area; or
  - (c) it appears to them that the applicant's proposed local delivery service would not cover the whole of the franchise area; or
  - (d) it appears to them that any telecommunication system proposed to be used by the applicant in the provision of that service would not be acceptable to the relevant licensing authorities.
- (6) A local delivery licence granted in pursuance of this paragraph shall come into force on the expiry date.
- (7) Subject to sub-paragraph (8), subsections (6) to (9) of section 78 of this Act shall apply in connection with the grant of an application for a local delivery licence under sub-paragraph (1) above as they apply in connection with the grant of an application for the renewal of a local delivery licence under subsection (1) of that section.
- (8) In the application of those subsections in accordance with sub-paragraph (7)—
- (a) any reference to the renewal of a local delivery licence shall be construed as a reference to the grant of such a licence in pursuance of this paragraph (and related expressions shall be construed accordingly);
  - (b) in subsection (6)(b), the words from “a different” to “as” shall be omitted;
  - (c) in subsection (7), the words “, in accordance with sections 74 to 76, a licence ” shall be substituted for “a fresh licence”; and
  - (d) in subsection (8), the words from “formally” to “so” shall be omitted.
- (9) Sub-paragraphs (3) and (7) to (9) of paragraph 2 above shall have effect in relation to a local delivery licence granted in pursuance of this paragraph as they have effect in relation to such a licence granted in pursuance of that paragraph.
- (10) In this paragraph “the relevant licensing authorities” has the same meaning as in section 75 of this Act.

*Other diffusion services: continuation in force of existing licences*

- 5 (1) Subject to paragraph 7(1) below, where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which—
- (a) is not a prescribed diffusion service, but
  - (b) is provided in an area which is comprised in the area in which such a service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies,
- the licence shall, notwithstanding any repeals made by this Act, continue in force (subject to and in accordance with the provisions of this Schedule) for the remainder of the period specified in the licence.
- (2) Where any licence continues in force by virtue of sub-paragraph (1), any conditions which—
- (a) were included in it in pursuance of any provision of the 1984 Act, and
  - (b) were in force immediately before the transfer date,
- shall similarly continue in force (subject to the provisions of this Schedule), but any reference in the licence to the Cable Authority shall be construed, in relation to any time falling on or after that date, as a reference to the Commission.



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- (3) Without prejudice to the generality of paragraph 2(4) in Part III of this Schedule, the Commission may, in accordance with that provision, make such variations of a licence which continues in force by virtue of sub-paragraph (1) above as appear to them to be appropriate in consequence of any of the provisions of this Schedule.
- (4) Where—
- (a) a licence to which sub-paragraph (1) applies (“the relevant licence”) is due to expire on a particular date in accordance with that sub-paragraph (being a date falling within the period specified in sub-paragraph (5)), and
  - (b) it appears to the Commission that on that date there would be in force either—
    - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (1)(b), or
    - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service is for the time being provided under the relevant licence (“the relevant service”), but
  - (c) it also appears to them that on that date the holder of any such licence would not be in a position to provide his licensed service for all of the dwelling-houses for which the relevant service is for the time being provided,
- the Commission shall so vary the relevant licence as to secure that (subject to sub-paragraph (5)) the licence continues in force until such time subsequent to that date as they may specify in a notice given to the holder of the licence; and the Commission shall not specify a time for the purposes of this sub-paragraph unless they have reasonable grounds for believing that, at that time, the holder of any such licence as is mentioned in paragraph (b)(i) or (ii) above would be in a position to provide his licensed service for all of the dwelling-houses referred to in paragraph (c) above.
- (5) A licence to which sub-paragraph (1) applies shall not continue in force in accordance with that sub-paragraph or sub-paragraph (4) beyond the end of the period of eight years beginning with the transfer date.
- (6) If on the date when such a licence ceases to be in force (“the expiry date”) either of the conditions specified in sub-paragraph (7) is satisfied, the holder of that licence (“the relevant licence”) shall be granted by the Commission, as from the expiry date, a licence under Part II of this Act to provide a local delivery service for the area in which a diffusion service was being provided under the relevant licence immediately before that date.
- (7) The conditions referred to in sub-paragraph (6) are—
- (a) that neither of the following is in force, namely—
    - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (1)(b), or
    - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service was being provided under the relevant licence immediately before the expiry date;
  - (b) that any such licence as is mentioned in paragraph (a)(i) or (ii) above is in force but it appears to the Commission that the holder of the licence is not in a position to provide his licensed service for all of the dwelling-houses for which a diffusion service was being provided under the relevant licence immediately before the expiry date.

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- (8) Subject to sub-paragraph (9), the following provisions, namely—
- (a) sub-paragraphs (7) to (9) of paragraph 2 above, and
  - (b) sub-paragraphs (2) to (5) of paragraph 6 below,
- shall have effect in relation to a local delivery licence granted in pursuance of sub-paragraph (6) above as they have effect in relation to such a licence granted in pursuance of paragraph 2 above or (as the case may be) paragraph 6 below.
- (9) In its application in relation to a licence granted in pursuance of sub-paragraph (6), paragraph 6(4)(a) shall have effect with the substitution of a reference to the date as from which the licence is granted for the reference to the transfer date.

*Other diffusion services: replacement of cable licences by local delivery licences*

- 6 (1) Subject to paragraph 7(1) below, where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which is neither—
- (a) a prescribed diffusion service, nor
  - (b) a diffusion service to which paragraph 5(1) above applies,
- the licence shall cease to have effect on the transfer date; but the holder of the licence shall be granted by the Commission as from that date a licence under Part II of this Act to provide a local delivery service for the area in which the diffusion service was authorised to be provided immediately before that date.
- (2) So much of section 73(2) of this Act as relates to the provision of local delivery services by wireless telegraphy shall not apply to a local delivery licence granted in pursuance of this paragraph.
- (3) Any local delivery licence granted in pursuance of this paragraph shall be so granted notwithstanding anything in sections 74 to 76 of this Act; and nothing in section 77 of this Act shall apply to such a local delivery licence until such time (if any) as it is renewed in accordance with sub-paragraph (4).
- (4) Section 78 of this Act shall apply to such a local delivery licence as if—
- (a) in subsection (1), the first reference to a period of fifteen years were a reference to the period of five years beginning with the transfer date, and the second reference to a period of fifteen years were a reference to a period of five years;
  - (b) in subsection (2), the reference to five years were a reference to three years;
  - (c) in subsection (4), paragraph (b) were omitted;
  - (d) subsection (5) were omitted;
  - (e) in subsection (6)(b), the words from “a different” to “as” were omitted; and
  - (f) in subsection (9), the reference to any conditions included in the licence in pursuance of section 77 were a reference to any conditions so included in accordance with sub-paragraph (5).
- (5) Where such a local delivery licence is to be renewed in accordance with sub-paragraph (4), the Commission shall (notwithstanding section 3(4) of this Act, as applied by section 73(3)) by notice served on the licence holder vary the licence, as from the date of its renewal, by including in it such conditions as appear to them to be necessary or expedient in consequence of sub-paragraph (3).

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- (6) Sub-paragraphs (7) to (9) of paragraph 2 above shall have effect in relation to a local delivery licence granted in pursuance of this paragraph as they have effect in relation to such a licence granted in pursuance of that paragraph.

*Other diffusion services: certain licences to cease to have effect*

- 7 (1) Neither paragraph 5(1) nor paragraph 6(1) above applies to a licence to provide a diffusion service—
- (a) for a single building, or
  - (b) in an area in which there are not more than the prescribed number of dwelling-houses;
- and any such licence shall cease to have effect on the transfer date.
- (2) In sub-paragraph (1) “the prescribed number” means such number as the Secretary of State may by order prescribe; and any order under this sub-paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Other diffusion services: certain unlicensed services to be licensed as cableservices or local delivery services*

- 8 (1) This paragraph has effect in relation to any diffusion service—
- (a) which immediately before the transfer date is, by virtue of paragraph 1 of the Schedule to the <sup>M25</sup>Cable Programme Services (Exceptions) Order 1988, not required to be licensed under Part I of the 1984 Act; and
  - (b) which is for the time being provided by means of a telecommunication system which has not previously been used for the purpose of providing a service licensed under that Part of that Act; but
  - (c) which on that date either—
    - (i) constitutes a local delivery service for the purposes of Part II of this Act, or
    - (ii) is specified in an order made by the Secretary of State.
- (2) Where immediately before that date any such service (“the relevant service”) is provided in an area which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies, the Commission shall, if the person providing the relevant service so requests before that date, grant that person as from that date a licence to provide a diffusion service in the area in which the relevant service was being provided immediately before that date.
- (3) A licence granted under sub-paragraph (2) shall be in writing and (subject to the provisions of this Schedule) shall continue in force for the period of five years beginning with the transfer date.
- (4) Sub-paragraphs (3) and (4) of paragraph 3 above shall apply to a licence granted under sub-paragraph (2) as they apply to a licence granted under that paragraph.
- (5) Where—
- (a) a licence granted under sub-paragraph (2) (“the relevant licence”) is due to expire on a particular date in accordance with sub-paragraph (3), and
  - (b) it appears to the Commission that on that date there would be in force either—

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- (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (2), or
  - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service is for the time being provided under the relevant licence (“the relevant service”), but
  - (c) it also appears to them that on that date the holder of any such licence would not be in a position to provide his licensed service for all of the dwelling-houses for which the relevant service is for the time being provided,
- the Commission shall so vary the relevant licence as to secure that (subject to sub-paragraph (6)) the licence continues in force until such time subsequent to that date as they may specify in a notice given to the holder of the licence; and the Commission shall not specify a time for the purposes of this sub-paragraph unless they have reasonable grounds for believing that, at that time, the holder of any such licence as is mentioned in paragraph (b)(i) or (ii) above would be in a position to provide his licensed service for all of the dwelling-houses referred to in paragraph (c) above.
- (6) A licence granted under sub-paragraph (2) shall not continue in force in accordance with sub-paragraph (5) beyond the end of the period of eight years beginning with the transfer date.
  - (7) If on the date when such a licence ceases to be in force (“the expiry date”) either of the conditions specified in sub-paragraph (8) is satisfied, the holder of that licence (“the relevant licence”) shall be granted by the Commission, as from the expiry date, a licence under Part II of this Act to provide a local delivery service for the area in which a diffusion service was being provided under the relevant licence immediately before that date.
  - (8) The conditions referred to in sub-paragraph (7) are—
    - (a) that neither of the following is in force, namely—
      - (i) any such licence to provide a prescribed diffusion service as is referred to in sub-paragraph (2), or
      - (ii) a local delivery licence authorising the provision of a local delivery service for an area consisting of or including the area in which a diffusion service was being provided under the relevant licence immediately before the expiry date;
    - (b) that any such licence as is mentioned in paragraph (a)(i) or (ii) above is in force but it appears to the Commission that the holder of the licence is not in a position to provide his licensed service for all of the dwelling-houses for which a diffusion service was being provided under the relevant licence immediately before the expiry date.
  - (9) Where immediately before the transfer date any such diffusion service as is mentioned in sub-paragraph (1) above is not being provided in any such area as is mentioned in sub-paragraph (2), the Commission shall, if the person providing the service so requests before that date, grant that person as from that date a licence under Part II of this Act to provide a local delivery service for the area in which the diffusion service was being provided immediately before that date.
  - (10) Subject to sub-paragraph (11), the following provisions, namely—
    - (a) sub-paragraphs (7) to (9) of paragraph 2 above, and
    - (b) sub-paragraphs (2) to (5) of paragraph 6 above,

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shall have effect in relation to a local delivery licence granted in pursuance of sub-paragraph (7) or (9) above as they have effect in relation to such a licence granted in pursuance of paragraph 2 or (as the case may be) paragraph 6 above.

- (11) In its application in relation to a licence granted in pursuance of sub-paragraph (7) above, paragraph 6(4)(a) shall have effect with the substitution of a reference to the date as from which the licence is granted for the reference to the transfer date.
- (12) In the case of a local delivery licence granted in pursuance of sub-paragraph (9) above, nothing in paragraph 1(1) in Part II of Schedule 2 to this Act shall have the effect of rendering—
- (a) a local authority, or
  - (b) a body which is controlled by such an authority,
- a disqualified person in relation to the licence during the period of five years beginning with the date of its coming into force; and in this sub-paragraph “local authority” has the same meaning as in that Schedule.

#### Marginal Citations

M25 S.I. 1988/1370.

#### *Other diffusion services: services falling partly within and partly outside franchise areas*

- 9 (1) Where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a diffusion service which—
- (a) is not a prescribed diffusion service, but
  - (b) is provided in an area (“the relevant area”) only part of which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) applies (“the franchise area”),
- then (subject to paragraph 7 above)—
- (i) paragraph 5 above shall apply to the licence to the extent that it authorises the provision of a diffusion service in so much of the relevant area as is comprised in the franchise area, and
  - (ii) paragraph 6(1) above shall apply to the licence to the extent that it authorises the provision of such a service in so much of the relevant area as is not so comprised.
- (2) The reference in paragraph 6(1) to the area in which a diffusion service was authorised to be provided immediately before the transfer date shall accordingly be construed, in relation to a licence to which sub-paragraph (1) above applies, as a reference to so much of that area as is not comprised in the franchise area.
- (3) The reference in paragraph 7(1) above to a licence to provide a diffusion service shall be construed, in relation to a licence to which sub-paragraph (1) above applies—
- (a) in connection with the application of paragraph 5(1) above, as a reference to the licence to the extent that it authorises the provision of such a service as is mentioned in sub-paragraph (1)(i) above; and
  - (b) in connection with the application of paragraph 6(1) above, as a reference to the licence to the extent that it authorises the provision of such a service as is mentioned in sub-paragraph (1)(ii) above.

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- (4) Where immediately before the transfer date any such diffusion service as is mentioned in paragraph 8(1) above is provided in an area (“the relevant area”) only part of which is comprised in the area in which a prescribed diffusion service is for the time being authorised to be provided under a licence to which paragraph 1(1) above applies (“the franchise area”), then (subject to sub-paragraph (5) below)—
- (a) paragraph 8(2) above shall apply to the service to the extent that it is, immediately before that date, being provided in so much of the relevant area as is comprised in the franchise area, and
  - (b) paragraph 8(9) above shall apply to the service to the extent that it is then being provided in so much of the relevant area as is not so comprised.
- (5) Neither paragraph 8(2) nor paragraph 8(9) shall apply to a diffusion service in accordance with sub-paragraph (4) above if the part of the service to which it would otherwise so apply would serve only—
- (a) a single building, or
  - (b) an area in which there are not more than the prescribed number of dwelling-houses;
- and in paragraph (b) “the prescribed number” has the same meaning as in paragraph 7(1) above.

*Restricted services: replacement of existing licences*

- 10 (1) Where immediately before the transfer date there is in force under Part I of the 1984 Act a licence to provide a restricted service (“the restricted service licence”), the licence shall cease to have effect on the transfer date; but if he makes the appropriate request before that date the holder of the licence shall—
- (a) where the restricted service consists in the provision of television programmes, be granted by the Commission as from that date a licence under Part I of this Act to provide a licensable programme service, or
  - (b) where the restricted service consists in the provision of sound programmes, be granted by the Radio Authority as from that date a licence under Part III of this Act to provide a licensable sound programme service,
- being a service of such a description as will, in the opinion of the Commission or (as the case may be) the Radio Authority, enable the service to be provided under the licence mentioned in paragraph (a) or (b) to correspond as nearly as possible to the service provided under the restricted service licence.
- (2) In sub-paragraph (1) “the appropriate request”—
- (a) in a case to which paragraph (a) of that sub-paragraph applies, means a request to the Commission; and
  - (b) in a case to which paragraph (b) of that sub-paragraph applies, means a request to the Radio Authority.
- (3) Nothing in section 47(1) to (3) or (as the case may be) section 86(3)(b) or 113(1) or (2) of this Act shall apply in relation to a licence granted in pursuance of sub-paragraph (1); and any such licence shall (subject to the provisions of Part I or, as the case may be, Part III of this Act) continue in force for the remainder of the period specified in the restricted service licence.
- (4) Section 3(3) of this Act shall, in its application to a licence granted in pursuance of sub-paragraph (1)(a), have effect as if the reference to Part I of this Act included a reference to this Part of this Schedule; and section 86(4) of this Act shall, in its

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application to a licence granted in pursuance of sub-paragraph (1)(b), have effect as if the reference to Part III of this Act included a reference to this Part of this Schedule.

- (5) Except as provided in sub-paragraphs (3) and (4)—
- (a) Part I of this Act applies to a licence granted in pursuance of sub-paragraph (1)(a) as it applies to any other licence granted under that Part to provide a licensable programme service; and
  - (b) Part III of this Act applies to a licence granted in pursuance of sub-paragraph (1)(b) as it applies to any other licence granted under that Part to provide a licensable sound programme service.
- (6) In this paragraph—
- “licensable programme service” has the same meaning as in Part I of this Act;
  - “licensable sound programme service” has the same meaning as in Part III of this Act;
  - “restricted service” has the same meaning as in Part I of the 1984 Act.

#### *Requests made under this Part*

- 11 Any request made to the Commission in pursuance of any provision of this Part of this Schedule must be in writing.

#### *Saving for liabilities under terminated licences*

- 12 (1) Where any licence ceases to have effect at any time on or after the transfer date by virtue of any provision of this Part of this Schedule, any liability of the licence holder which has accrued before that time under or by virtue of the licence shall not be affected by the licence so ceasing to have effect.
- (2) Where any such licence (“the existing licence”) so ceases to have effect but the licence holder is granted in its place a licence (“the new licence”) in pursuance of any provision of this Part of this Schedule, any agreement—
- (a) made between the licence holder and any other person before the time when the existing licence so ceases to have effect, and
  - (b) framed (whether expressly or by implication) by reference to the existing licence or to the licence holder’s status as the holder of that licence,
- shall (unless it expressly provides otherwise) have effect as from that time with such modifications as are necessary to take account of the replacement of the existing licence by the new licence or of the licence holder’s new status as the holder of the new licence (as the case may require).
- (3) References in sub-paragraph (2) to an agreement include references—
- (a) to an oral agreement, and
  - (b) to a deed, bond or other instrument.

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### PART III

#### PROVISIONS RELATING TO LICENCES IN FORCE UNDER OR BY VIRTUE OF THIS SCHEDULE

##### *Effect of relevant licences*

- 1 (1) Subject to sub-paragraph (4) below, a relevant licence shall have effect only so as to authorise the provision of a service consisting in the use of a telecommunication system for the purpose of the delivery of one or more of the following, namely—
- (a) any of the services specified in section 72(2) of this Act, or
  - (b) any television or local sound broadcasting service provided by the Commission or the Radio Authority in accordance with Schedule 11 to this Act,
- for simultaneous reception in dwelling-houses in the area for which the licensed service is to be provided.
- (2) Accordingly the holder of any such licence shall not be subject to regulation under Part I or Part III of this Act as respects the programmes included in any service delivered by the telecommunication system in question except—
- (a) to the extent that he is to be regarded for the purposes of that Part of this Act as providing any such service, or
  - (b) in the case of Part I, in consequence of sub-paragraph (3)(b) below.
- (3) In section 79 of this Act—
- (a) subsection (1) shall apply to the holder of a relevant licence and the service authorised to be provided under such a licence (“a licensed diffusion service”) as it applies to the holder of a local delivery licence and his local delivery service; and
  - (b) subsections (2) and (3) shall apply to a licensed diffusion service as they apply to a licensed local delivery service.
- (4) The holder of a relevant licence shall be taken to be authorised by his licence to include in his licensed diffusion service advertisements which are inserted by him and are not included in any service falling within section 72(2) of this Act; but, if any such advertisements are so included by him, sections 8 and 9 of this Act shall have effect as if the delivery of those advertisements constituted the provision of a service licensed under Part I of this Act and he were the holder of a licence in force under that Part.
- (5) Section 80 of this Act shall apply to the holder of a relevant licence as it applies to the holder of a local delivery licence.
- (6) Section 82(1) of this Act shall not apply to any local delivery service which is a licensed diffusion service.

##### *General provisions about relevant licences*

- 2 (1) It shall be the duty of the Commission to discharge their functions under this Schedule as respects the licensing of diffusion services in the manner which they consider is best calculated to ensure fair and effective competition in the provision of such services and services connected with them.
- (2) The Commission—



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- (a) shall not grant a licence to any person under paragraph 3 or 8(2) in Part II of this Schedule 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 relevant licence, that person does not remain the holder of the licence;

and nothing in that Part of this Schedule shall be construed as affecting the operation of this sub-paragraph or paragraph 3 below.

- (3) The payment or payments required to be rendered to the Commission—
  - (a) in the case of a licence which continues in force by virtue of paragraph 1 or 5 in Part II of this Schedule, by virtue of conditions included in it in pursuance of section 4(5)(b) of the 1984 Act, or
  - (b) by virtue of conditions included in a licence in pursuance of paragraph 3(3)(b) or 8(4) in Part II of this Schedule,shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of the licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to this Act.
- (4) The Commission may vary a relevant licence by a notice served on the holder of the licence 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 the Commission about the variation.
- (5) The Commission shall not under sub-paragraph (4)—
  - (a) vary the period for which a licence to provide a prescribed diffusion service is to continue in force if that period, as varied, would exceed—
    - (i) fifteen years in the case of a licence to which section 4(4)(a) of the 1984 Act applied immediately before the transfer date, or
    - (ii) eight years in the case of any other licence, or
  - (b) vary the period for which—
    - (i) a licence to which paragraph 5(1) in Part II of this Schedule applies, or
    - (ii) a licence granted in pursuance of paragraph 8(2) in that Part,is to continue in force.
- (6) Sub-paragraph (4)(a) does not apply to any variation effected in accordance with paragraph 5(4) or 8(5) in Part II of this Schedule; but any such variation shall be effected by means of a notice served by the Commission on the holder of the licence in question.
- (7) Section 3(6) and (7) of this Act shall apply to a relevant licence as they apply to a licence granted under Part II of this Act.

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*Restrictions on the holding of certain relevant licences*

- 3 (1) The Commission shall do all that they can to secure that none of the following, namely—
- (a) a local authority,
  - (b) a body whose objects are wholly or mainly of a religious or political nature,
  - (c) an individual who is an officer of a body falling within paragraph (b) above, or
  - (d) a body which is controlled by a person falling within any of the preceding paragraphs, or by two or more such persons taken together,
- becomes or remains the holder of a licence to which this paragraph applies.
- (2) The Commission shall do all that they can to secure that a person who is (or is an associate of)—
- (a) a programme contractor for the provision of television programmes or sound broadcasts for any area or locality,
  - (b) the holder of a licence to provide a regional Channel 3 service or a local radio service for any area or locality, or
  - (c) the proprietor of a local newspaper circulating wholly or mainly in any area,
- does not become or remain the holder of a licence to which this paragraph applies if the service to be provided under that licence is to be so provided in any part of that area or locality.
- (3) The Commission shall do all that they can to secure that a person who is (or is an associate of) the holder of a licence to provide Channel 5 does not become or remain the holder of a licence to which this paragraph applies if the service to be provided under that licence is to be so provided in any part of the area for which the Channel 5 service is to be provided.
- (4) The Commission shall do all that they can to secure that a body corporate in which—
- (a) any of the persons mentioned in sub-paragraph (5) is a participant, or
  - (b) any of the persons mentioned in sub-paragraph (6) is a principal participant,
- does not become or remain the holder of a licence to which this paragraph applies if, in the opinion of the Commission, that person's participation in the body corporate has led, is leading or is likely to lead to results which are adverse to the public interest.
- (5) The persons referred to in sub-paragraph (4)(a) are—
- (a) a local authority;
  - (b) a body whose objects are wholly or mainly of a religious or political nature;
  - (c) the BBC and the Welsh Authority; and
  - (d) a body which is controlled by a person falling within any of the preceding paragraphs, or by two or more such persons taken together.
- (6) The persons referred to in sub-paragraph (4)(b) are—
- (a) a person who is a principal participant in another body corporate which is—
    - (i) the holder of a licence to which this paragraph applies, or
    - (ii) the holder of a local delivery licence;
  - (b) a programme contractor;

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- (c) the holder of a licence to provide any of the following services, namely a Channel 3 service, Channel 4, Channel 5, a domestic satellite service, a national radio service or a local radio service;
  - (d) the proprietor of a national or local newspaper;
  - (e) an advertising agent;
  - (f) an associate of a person falling within any of the preceding paragraphs;
  - (g) a person who has control over a body falling within any of the preceding paragraphs; and
  - (h) a body which is controlled by a person falling within any of paragraphs (a) to (f) above, or by two or more such persons taken together.
- (7) This paragraph applies to any relevant licence authorising the provision of a prescribed diffusion service.
- (8) In this paragraph—
- (a) “associate”, “local authority” and “participant” have the same meaning as in Schedule 2 to this Act, and “principal participant”, in relation to a body corporate, means a person who (whether alone or jointly with one or more other persons, and whether directly or through one or more nominees) holds or is beneficially entitled to not less than one-twentieth of the shares, or possesses not less than one-twentieth of the voting power, in that body corporate;
  - (b) any reference to a national or local newspaper is a reference to a newspaper which is, or is to be treated as, a national or local newspaper for the purposes of Part IV of that Schedule;
  - (c) “programme contractor” has the same meaning as in the <sup>M26</sup>Broadcasting Act 1981;
  - (d) any reference to a Channel 3 service (whether regional or otherwise), to Channel 4 or 5, or to a domestic satellite service shall be construed in accordance with section 71(1) of this Act; and
  - (e) any reference to a national or local radio service is a reference to a national or local service within the meaning of Part III of this Act.

**Marginal Citations**

**M26** 1981 c. 68.

*Inclusion of broadcasts in licensed services*

- 4 (1) Section 13 of the 1984 Act (inclusion of certain broadcasts in cable services) shall, during the interim period, have effect in relation to diffusion services provided under relevant licences as it had effect, immediately before the transfer date, in relation to such services provided under licences in force under Part I of that Act, but subject to the following modifications, namely—
- (a) any reference to the Cable Authority shall be construed as a reference to the Commission;
  - (b) any reference to a broadcasting authority shall (subject to paragraph (c) below) be construed as a reference to the BBC or the Welsh Authority or

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- to the Commission in so far as they are providing a television broadcasting service in accordance with Schedule 11 to this Act; and
- (c) in subsection (1) the reference to both broadcasting authorities shall be construed as a reference to the BBC and the Welsh Authority, and the words “or sound” shall be omitted.
- (2) As from the end of the interim period section 13 of the 1984 Act shall have effect as provided in sub-paragraph (1) but subject to the following modifications (instead of those specified in paragraphs (a) to (c) of that sub-paragraph), namely—
- (a) any reference to the Cable Authority shall be construed as a reference to the Commission;
- (b) any reference to a broadcasting authority shall (subject to paragraph (c) below) be construed as a reference to—
- (i) the BBC,
- (ii) the Welsh Authority,
- (iii) the Channel Four Television Corporation, or
- (iv) the holder of a licence under Part I of this Act to provide a Channel 3 service within the meaning of that Part of this Act;
- (c) in subsection (1)—
- (i) the reference to both broadcasting authorities shall be construed as a reference to the BBC and the Welsh Authority, and
- (ii) the words “or sound” shall be omitted; and
- (d) subsections (5) and (6) shall be omitted.
- (3) Any order which, immediately before the transfer date, is in force under section 13(1) of the 1984 Act shall continue in force on and after that date until revoked by a subsequent order made under that provision.
- (4) In this paragraph “the interim period” means the period beginning with the transfer date and ending with 31st December 1992.

VALID FROM 01/10/1996

[<sup>F21</sup>4A (1) Where the Commission are satisfied, in the case of any diffusion service which is provided under a relevant licence and by means of which one or more of the services specified in section 72(2) of this Act is delivered in digital form, that it would be appropriate, having regard to the extent of the use and proposed use of digital technology in the provision of the service, for the service to be treated as a digital diffusion service for the purposes of this paragraph, they shall serve a notice to that effect on the holder of the licence to provide the service; and in this paragraph “digital diffusion service” means a diffusion service in respect of which such a notice has been served.]

- (2) Subsections (2) to (8) of section 78A of this Act shall have effect in relation to a digital diffusion service as they have effect in relation to a digital local delivery service (within the meaning of that section); and nothing in paragraph 4 shall have effect in relation to a digital diffusion service.]

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### Textual Amendments

- F21** Sch. 12 Pt. III paras. 4, 4A substituted (1.10.1996) for para. 4 by 1996 c. 55, s. 91(2) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, Sch. 1

#### *Inclusion of local material in prescribed diffusion services*

- 5 (1) In the case of a licence which continues in force by virtue of paragraph 1 in Part II of this Schedule, nothing in this Schedule shall be construed as prejudicing the operation of any conditions included in the licence which—
- (a) were included in it in pursuance of section 4(5)(a) of the 1984 Act, and
  - (b) relate to the inclusion of such programmes, or to assisting such organisations, as are mentioned in section 7(2)(f) of that Act.
- (2) Where—
- (a) any licence (“the new licence”) is granted under paragraph 3 in Part II of this Schedule, and
  - (b) the licence to provide the existing service (within the meaning of that paragraph) included any such conditions as are mentioned in sub-paragraph (1) above,
- the new licence shall include conditions corresponding to those conditions.

#### *Revocation of licences*

- 6 (1) Every relevant licence shall contain all such provisions as the Commission consider requisite or expedient to ensure that—
- (a) if, in view of any failure by the licence holder to comply with any condition of the licence or any direction given by the Commission, the Commission consider it necessary to do so in the public interest, or
  - (b) where the licence authorises the provision of a prescribed diffusion service, if the Commission consider it necessary to do so for the purpose of complying with paragraph 3 above, or
  - (c) where—
    - (i) the licence holder is a body, and
    - (ii) any change affecting the nature or characteristics of the body, or any change in the persons having control over or interests in the body, has taken place after the granting of the licence, and
    - (iii) the change is such that, if it fell to the Commission to determine whether to grant the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from granting the licence to the body,
- the Commission may revoke the licence by notice given to the licence holder and taking effect forthwith or on a date specified in the notice.
- (2) Before revoking a licence under a provision included in a licence in pursuance of sub-paragraph (1), the Commission shall—
- (a) give the licence holder a reasonable opportunity of making representations to them about the matters complained of; and
  - (b) consult the licensing authorities for the purposes of the <sup>M27</sup>Telecommunications Act 1984.

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**Marginal Citations**

**M27** 1984 c. 12.

*Supplementary provisions*

- 7 (1) Any notice, direction or other thing given or done by or in relation to the Cable Authority—
- (a) in pursuance of section 4(5) or 17 of the 1984 Act, and
  - (b) in connection with any licence which continues in force as from the transfer date by virtue of paragraph 1 or 5 in Part II of this Schedule,
- shall, if in force or effective immediately before that date, have effect as from that date as if 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 Cable Authority 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.

SCHEDULE 13

Section 142.

THE BROADCASTING COMPLAINTS COMMISSION: SUPPLEMENTARY PROVISIONS

*Status and capacity*

- 1 (1) The BCC shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (2) It shall be within the capacity of the BCC as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act.

*Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the BCC so long as he is—
- (a) a governor or employee of the BBC;
  - (b) a member or employee of the Independent Television Commission established by this Act;
  - (c) a member or employee of the Radio Authority established by this Act;
  - (d) a member or employee of the Channel Four Television Corporation established by this Act;
  - (e) a member or employee of the Welsh Authority;
  - (f) a member or employee of the Broadcasting Standards Council established by this Act; or

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- (g) a person who does not fall within any of the preceding paragraphs but who appears to the Secretary of State to be concerned with, or to have an interest in—
  - (i) the preparation or provision of programmes for broadcasting by the BBC or the Welsh Authority; or
  - (ii) the provision of a licensed service or the preparation or provision of programmes for inclusion in such a service.
- (2) Before appointing a person to be a member of the BCC the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the BCC; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the BCC that he has no such interest.
- (3) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the BCC shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (2).

#### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the BCC shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the BCC for more than five years at a time.
- (3) Any member of the BCC may at any time resign his office by notice in writing to the Secretary of State.

#### *Remuneration and pensions of members*

- 4 (1) The BCC may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The BCC may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the BCC may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

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### *Proceedings*

- 5 (1) Subject to paragraph 6 and to the provisions of Part V of this Act, the quorum of the BCC and the arrangements relating to their meetings shall be such as the BCC may determine.
- (2) The arrangements may provide for the discharge, under the general direction of the BCC, of any of the BCC's functions by a committee or by one or more of the members or employees of the BCC.
- 6 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the BCC shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
- (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the BCC, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the BCC at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the BCC by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the BCC in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the BCC include references to a meeting of any of their committees.
- 7 The validity of any proceedings of the BCC shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 6.

### *Employees of the BCC*

- 8 (1) The BCC may appoint such number of employees as they may determine.
- (2) The remuneration and other conditions of service of the persons appointed under this paragraph shall be determined by the BCC.
- (3) If the BCC determine to do so in the case of any of their employees, the BCC shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the BCC may determine.



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- (4) Any determination under sub-paragraph (1), (2) or (3) shall require the approval of the Secretary of State given with the consent of the Treasury.
- (5) If any employee of the BCC—
  - (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the BCC,he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the BCC were service as an employee of the BCC.
- (6) The <sup>M28</sup>Employers' Liability (Compulsory Insurance) Act 1969 shall not require insurance to be effected by the BCC.

**Marginal Citations**

**M28** 1969 c. 57.

*Financial provisions*

- 9 (1) The Secretary of State shall pay to the BCC—
  - (a) any expenses incurred or to be incurred by the BCC by virtue of paragraph 4 or 8; and
  - (b) with the consent of the Treasury, such sums as he thinks fit for enabling the BCC to meet other expenses.
- (2) Any sums required by the Secretary of State for making payments under sub-paragraph (1) shall be paid out of money provided by Parliament.

*Authentication of BCC's seal*

- 10 The application of the seal of the BCC shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

*Presumption of authenticity of documents issued by BCC*

- 11 Any document purporting to be an instrument issued by the BCC and to be duly executed under the seal of the BCC or to be signed on behalf of the BCC shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

*Accounts and audit*

- 12 (1) The BCC shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.

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- (2) The accounts of the BCC shall be audited by auditors to be appointed by the BCC with the approval of the Secretary of State.
- [<sup>F22</sup>(3) A person shall not be qualified to be appointed as an auditor in pursuance of subparagraph (2) above unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The BCC shall at all reasonable times upon demand made by the Secretary of State or by any persons authorised by him in that behalf—
- (a) afford to him or them full liberty to examine the accounts of the BCC; and
  - (b) furnish him or them with all forecasts, estimates, information and documents which he or they may require with respect to the financial transactions and commitments of the BCC.

**Textual Amendments**

**F22** Sch. 13 para. 12(3) substituted (01.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 77(6).

SCHEDULE 14

Section 151.

THE BROADCASTING STANDARDS COUNCIL: SUPPLEMENTARY PROVISIONS

*Status and capacity*

- 1 (1) The Council shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (2) It shall be within the capacity of the Council as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act.

*Appointment of members*

- 2 (1) A person shall be disqualified for being a member of the Council so long as he is—
- (a) a governor or employee of the BBC; or
  - (b) a member or employee of the Independent Television Commission established by this Act; or
  - (c) a member or employee of the Radio Authority established by this Act; or
  - (d) a member or employee of the Channel Four Television Corporation established by this Act; or
  - (e) a member or employee of the Welsh Authority; or
  - (f) a member or employee of the Broadcasting Complaints Commission.
- (2) Before appointing a person to be a member of the Council the Secretary of State shall satisfy himself that that person will have no such financial or other interest as

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is likely to affect prejudicially the discharge by him of his functions as a member of the Council; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the Council that he has no such interest.

- (3) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the Council shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (2).

#### *Tenure of office*

- 3 (1) Subject to the following provisions of this paragraph, each member of the Council shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a member of the Council for more than five years at a time.
- (3) Any member of the Council may at any time resign his office by notice in writing to the Secretary of State.

#### *Remuneration and pensions of members*

- 4 (1) The Council may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The Council may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Council may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury shall be required for any determination under this paragraph.

#### *Disqualification of members of Council for House of Commons and Northern Ireland Assembly*

- 5 In Part II of Schedule 1 to the <sup>M29</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“The Broadcasting Standards Council”

and a corresponding amendment shall be made in Part II of Schedule 1 to the <sup>M30</sup>Northern Ireland Assembly Disqualification Act 1975.

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#### Marginal Citations

**M29** 1975 c. 24.

**M30** 1975 c. 25.

#### *Proceedings*

- 6 (1) Subject to paragraph 7 and to the provisions of Part VI of this Act, the quorum of the Council and the arrangements relating to their meetings shall be such as the Council may determine.
- (2) The arrangements may provide for the discharge, under the general direction of the Council, of any of the Council's functions by a committee or by one or more of the members or employees of the Council.
- 7 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Council shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
- (a) the disclosure shall be recorded in the minutes of the meeting, and
- (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Council, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Council at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Council by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Council in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the Council include references to a meeting of any of their committees.
- 8 The validity of any proceedings of the Council shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 7.

#### *Employees of the Council*

- 9 (1) The Council may appoint such number of employees as they may determine.

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- (2) The remuneration and other conditions of service of the persons appointed under this paragraph shall be determined by the Council.
- (3) If the Council determine to do so in the case of any of their employees, the Council shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Council may determine.
- (4) Any determination under sub-paragraph (1), (2) or (3) shall require the approval of the Secretary of State given with the consent of the Treasury.
- (5) If any employee of the Council—
  - (a) is a participant in any pension scheme applicable to his employment, and
  - (b) becomes a member of the Council,
 he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the Council were service as an employee of the Council.
- (6) The <sup>M31</sup>Employers' Liability (Compulsory Insurance) Act 1969 shall not require insurance to be effected by the Council.

#### Marginal Citations

M31 1969 c. 57.

#### *Financial provisions*

- 10 (1) The Secretary of State shall pay to the Council—
  - (a) any expenses incurred or to be incurred by the Council by virtue of paragraph 4 or 9; and
  - (b) with the consent of the Treasury, such sums as he thinks fit for enabling the Council to meet other expenses.
- (2) Any sums required by the Secretary of State for making payments under sub-paragraph (1) shall be paid out of money provided by Parliament.

#### *Authentication of Council's seal*

- 11 The application of the seal of the Council shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

#### *Presumption of authenticity of documents issued by Council*

- 12 Any document purporting to be an instrument issued by the Council and to be duly executed under the seal of the Council or to be signed on behalf of the Council shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

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### *Accounts and audit*

- 13 (1) It shall be the duty of the Council—
- (a) to keep proper accounts and proper records in relation to the accounts,
  - (b) to prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury, and
  - (c) to send copies of each such statement to the Secretary of State and the Comptroller and Auditor General not later than 31st August next following the end of the financial year to which the statement relates.
- (2) The Comptroller and Auditor General shall examine, certify and report on each statement of accounts sent to him by the Council and shall lay a copy of every such statement and of his report before each House of Parliament.

## SCHEDULE 15

Section 162.

### APPLICATION OF 1959 ACT TO TELEVISION AND SOUND PROGRAMMES

#### *Interpretation*

- 1 In this Schedule—
- “the 1959 Act” means the <sup>M32</sup>Obscene Publications Act 1959;
- “relevant programme” means a programme included in a programme service;
- and other expressions used in this Schedule which are also used in the 1959 Act have the same meaning as in that Act.

#### **Marginal Citations**

**M32** 1959 c. 66.

#### *Liability of person providing live programme material*

- 2 Where—
- (a) any matter is included by any person in a relevant programme in circumstances falling within section 1(5) of the 1959 Act, and
  - (b) that matter has been provided, for inclusion in that programme, by some other person,
- the 1959 Act shall have effect as if that matter had been included in that programme by that other person (as well as by the person referred to in sub-paragraph (a)).

#### *Obscene articles kept for inclusion in programmes*

- 3 It is hereby declared that where a person has an obscene article in his ownership, possession or control with a view to the matter recorded on it being included in a

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relevant programme, the article shall be taken for the purposes of the 1959 Act to be an obscene article had or kept by that person for publication for gain.

*Requirement for consent of Director of Public Prosecutions*

- 4 (1) Proceedings for an offence under section 2 of the 1959 Act for publishing an obscene article shall not be instituted except by or with the consent of the Director of Public Prosecutions in any case where—
- (a) the relevant publication, or
  - (b) the only other publication which followed from the relevant publication, took place in the course of the inclusion of a programme in a programme service; and in this sub-paragraph “the relevant publication” means the publication in respect of which the defendant would be charged if the proceedings were brought.
- (2) Proceedings for an offence under section 2 of the 1959 Act for having an obscene article for publication for gain shall not be instituted except by or with the consent of the Director of Public Prosecutions in any case where—
- (a) the relevant publication, or
  - (b) the only other publication which could reasonably have been expected to follow from the relevant publication, was to take place in the course of the inclusion of a programme in a programme service; and in this sub-paragraph “the relevant publication” means the publication which, if the proceedings were brought, the defendant would be alleged to have had in contemplation.
- (3) Without prejudice to the duty of a court to make an order for the forfeiture of an article under section 1(4) of the <sup>M33</sup>Obscene Publications Act 1964 (orders on conviction), in a case where by virtue of sub-paragraph (2) above proceedings under section 2 of the 1959 Act for having an article for publication for gain could not be instituted except by or with the consent of the Director of Public Prosecutions, no order for the forfeiture of the article shall be made under section 3 of the 1959 Act (power of search and seizure) unless the warrant under which the article was seized was issued on an information laid by or on behalf of the Director of Public Prosecutions.

**Marginal Citations**

**M33** 1964 c. 74.

*Defences*

- 5 (1) A person shall not be convicted of an offence under section 2 of the 1959 Act in respect of the inclusion of any matter in a relevant programme if he proves that he did not know and had no reason to suspect that the programme would include matter rendering him liable to be convicted of such an offence.
- (2) Where the publication in issue in any proceedings under that Act consists of the inclusion of any matter in a relevant programme, section 4(1) of that Act (general defence of public good) shall not apply; but—
- (a) a person shall not be convicted of an offence under section 2 of that Act, and
  - (b) an order for forfeiture shall not be made under section 3 of that Act,

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if it is proved that the inclusion of the matter in question in a relevant programme is justified as being for the public good on the ground that it is in the interests of—

- (i) drama, opera, ballet or any other art,
- (ii) science, literature or learning, or
- (iii) any other objects of general concern.

- (3) Section 4(2) of that Act (admissibility of opinions of experts) shall apply for the purposes of sub-paragraph (2) above as it applies for the purposes of section 4(1) and (1A) of that Act.

*Exclusion of proceedings under common law*

- 6 Without prejudice to section 2(4) of the 1959 Act, a person shall not be proceeded against for an offence at common law—
- (a) in respect of a relevant programme or anything said or done in the course of such a programme, where it is of the essence of the common law offence that the programme or (as the case may be) what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or
  - (b) in respect of an agreement to cause a programme to be included in a programme service or to cause anything to be said or done in the course of a programme which is to be so included, where the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.

SCHEDULE 16

Section 171.

AMENDMENTS OF THE <sup>M34</sup>MARINE, &C., BROADCASTING (OFFENCES) ACT 1967

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

**C1** Sch. 16 extended (with modifications) (Guernsey) (1.6.1994) by S.I. 1994/1064, art. 3(2), Sch. Pt. II

**Marginal Citations**

**M34** 1967 c. 41.

- 1 (1) Section 2 (prohibition of broadcasting from marine structures) shall be amended as follows.
- (2) In subsection (1)(a), for “external waters or in tidal waters in the United Kingdom” substitute “ any waters to which this section applies ”.
- (3) After subsection (2) insert the following subsection—
- “(3) This section applies to—
- (a) tidal waters in the United Kingdom;
  - (b) external waters; and
  - (c) waters in a designated area within the meaning of the Continental Shelf Act 1964.”
- 2 After section 2 insert the following section—



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## **“2A Unlawful broadcasting from within prescribed areas of the high seas.**

- (1) Subject to subsection (4) below, it shall not be lawful to make a broadcast which—
  - (a) is made from a ship (other than one registered in the United Kingdom, the Isle of Man or any of the Channel Islands) while the ship is within any area of the high seas prescribed for the purposes of this section by an order made by the Secretary of State; and
  - (b) is capable of being received in, or causes interference with any wireless telegraphy in, the United Kingdom.
- (2) If a broadcast is made from a ship in contravention of subsection (1) above, the owner of the ship, the master of the ship and every person who operates, or participates in the operation of, the apparatus by means of which the broadcast is made shall be guilty of an offence.
- (3) A person who procures the making of a broadcast in contravention of subsection (1) above shall be guilty of an offence.
- (4) The making of a broadcast does not contravene subsection (1) above if it is shown to have been authorised under the law of any country or territory outside the United Kingdom.
- (5) Any order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

3 In section 3 (prohibition of acts connected with broadcasting from certain ships and aircraft, and from marine structures outside the United Kingdom)—

- (a) in subsection (1), at the beginning insert “ Subject to subsection (1A) below, ” and
- (b) after subsection (1) insert the following subsection—

“(1A) Subsection (1)(a) above does not apply to any broadcast made in contravention of section 2A(1) of this Act, and subsections (1)(c) and (d) above do not apply to structures or other objects in waters falling within section 2(3)(c) of this Act.”

4 After section 3 insert the following section—

## **“3A Prohibition of management of stations broadcasting from ships, aircraft etc.**

- (1) Any person who, from any place in the United Kingdom or external waters, participates in the management, financing, operation or day-to-day running of any broadcasting station by which broadcasts are made—
  - (a) in contravention of section 1, 2 or 2A(1) of this Act, or
  - (b) as mentioned in section 3(1)(a) of this Act,shall be guilty of an offence.
- (2) In this section “broadcasting station” means any business or other operation (whether or not in the nature of a commercial venture) which is engaged in the making of broadcasts.”

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- 5 (1) Section 4 (prohibition of acts facilitating broadcasting from ships, aircraft etc.) shall be amended as follows.
- (2) In subsection (1), after paragraph (a) insert—
- “(aa) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from any structure or other object (not being a ship or aircraft) in waters falling within section 2(3)(c) of this Act, he does the act on that structure or other object within those waters; or
- (ab) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from a ship in contravention of section 2A(1) of this Act, he does the act in that ship within any such area of the high seas as is mentioned in paragraph (a) of that provision; or”.
- (3) In subsection (3)(e), for “or 2(1)” substitute “, 2(1) or 2A(1)”.
- 6 (1) Section 5 (prohibition of acts relating to matter broadcast from ships, aircraft etc.) shall be amended as follows.
- (2) In subsection (1), after paragraph (a) insert—
- “(aa) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from any structure or other object (not being a ship or aircraft) in waters falling within section 2(3)(c) of this Act, he does the act on that structure or other object within those waters; or
- (ab) where paragraph (a) above does not apply but the broadcasts in question are made, or are to be made, from a ship in contravention of section 2A(1) of this Act, he does the act in that ship within any such area of the high seas as is mentioned in paragraph (a) of that provision; or”.
- (3) In subsections (3)(a) and (4), for “or 2(1)”, in each place where those words occur, substitute “, 2(1) or 2A(1)”.
- 7 (1) Section 6 (penalties and legal proceedings) shall be amended as follows.
- (2) In subsection (1)(a), for “three” substitute “ six ”.
- (3) In subsection (5), for “on behalf of”, in both places where those words occur, substitute “ with the consent of the Secretary of State or ”.
- 8 After section 7 insert the following section—
- “7A Powers of enforcement in relation to marine offences under this Act.**
- (1) The following persons are enforcement officers for the purposes of this section—
- (a) persons authorised by the Secretary of State to exercise the powers conferred by subsection (5) below;
- (b) police officers;
- (c) commissioned officers of Her Majesty’s armed forces;
- (d) officers commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979; and

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- (e) persons not falling within any of the preceding paragraphs who are British sea-fishery officers by virtue of section 7(1) of the Sea Fisheries Act 1968;

and in this subsection “armed forces” means the Royal Navy, the Royal Marines, the regular army and the regular air force, and any reserve or auxiliary force of any of those services which has been called out on permanent service, or called into actual service, or embodied.

- (2) If an enforcement officer has reasonable grounds for suspecting—
- (a) that an offence under this Act has been or is being committed by the making of a broadcast from any ship, structure or other object in external waters or in tidal waters in the United Kingdom or from a ship registered in the United Kingdom, the Isle of Man or any of the Channel Islands while on the high seas,
  - (b) that an offence under section 2 of this Act has been or is being committed by the making of a broadcast from a structure or other object in waters falling within subsection (3)(c) of that section, or
  - (c) that an offence under section 2A of this Act has been or is being committed by the making of a broadcast from a ship,

and the Secretary of State has issued a written authorisation for the exercise of the powers conferred by subsection (5) below in relation to that ship, structure or other object, then (subject to subsections (6) and (7) below) the officer may, with or without persons assigned to assist him in his duties, so exercise those powers.

- (3) If—
- (a) the Secretary of State has issued an authorisation under subsection (2) above for the exercise of the powers conferred by subsection (5) below in relation to any ship, structure or other object, and
  - (b) an enforcement officer has reasonable grounds for suspecting that an offence under section 4 or 5 of this Act has been or is being committed in connection with the making of a broadcast from that ship, structure or other object,

then (subject to subsections (6) and (7) below) the officer may, with or without persons assigned to assist him in his duties, also exercise those powers in relation to any ship, structure or other object which he has reasonable grounds to suspect has been or is being used in connection with the commission of that offence.

- (4) Where—
- (a) an enforcement officer has reasonable grounds for suspecting that an offence under section 4 or 5 of this Act has been or is being committed in connection with the making of a broadcast from a ship, structure or other object, but
  - (b) an authorisation has not been issued under subsection (2) above for the exercise of the powers conferred by subsection (5) below in relation to that ship, structure or other object,

then (subject to subsections (6) and (7) below) the officer may, with or without persons assigned to assist him in his duties, nevertheless exercise those powers in relation to any ship, structure or other object which he

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has reasonable grounds to suspect has been or is being used in connection with the commission of that offence if the Secretary of State has issued a written authorisation for the exercise of those powers in relation to that ship, structure or other object.

(5) The powers conferred by this subsection on an enforcement officer in relation to any ship, structure or other object are—

- (a) to board and search the ship, structure or other object;
- (b) to seize and detain the ship, structure or other object and any apparatus or other thing found in the course of the search which appears to him to have been used, or to have been intended to be used, in connection with, or to be evidence of, the commission of the suspected offence;
- (c) to arrest and search any person who he has reasonable grounds to suspect has committed or is committing an offence under this Act if—
  - (i) that person is on board the ship, structure or other object, or
  - (ii) the officer has reasonable grounds for suspecting that that person was so on board at, or shortly before, the time when the officer boarded the ship, structure or other object;
- (d) to arrest any person who assaults him, or a person assigned to assist him in his duties, while exercising any of the powers conferred by this subsection or who intentionally obstructs him or any such person in the exercise of any of those powers;
- (e) to require any person on board the ship, structure or other object to produce any documents or other items which are in his custody or possession and are or may be evidence of the commission of any offence under this Act;
- (f) to require any such person to do anything for the purpose of facilitating the exercise of any of the powers conferred by this subsection, including enabling any apparatus or other thing to be rendered safe and, in the case of a ship, enabling the ship to be taken to a port;
- (g) to use reasonable force, if necessary, in exercising any of those powers;

and references in paragraphs (a) to (c) and (e) above to the ship, structure or other object include references to any ship's boat or other vessel used from the ship, structure or other object.

(6) Except as provided in subsection (7) below, the powers conferred by subsection (5) above shall only be exercised in tidal waters in the United Kingdom or in external waters.

(7) Those powers may in addition—

- (a) in relation to a suspected offence under this Act committed in a ship registered in the United Kingdom, the Isle of Man or any of the Channel Islands while on the high seas, be exercised in relation to that ship on the high seas;
- (b) in relation to a suspected offence under section 2 of this Act committed on a structure or other object within waters falling within subsection (3)(c) of that section, be exercised in relation to that structure or other object within those waters; and

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- (c) in relation to a suspected offence under section 2A of this Act committed in a ship within any such area of the high seas as is mentioned in subsection (1)(a) of that section, be exercised in relation to that ship within that area of the high seas.
- (8) Any person who—
- (a) assaults an enforcement officer, or a person assigned to assist him in his duties, while exercising any of the powers conferred by subsection (5) above or intentionally obstructs him or any such person in the exercise of any of those powers, or
  - (b) without reasonable excuse fails or refuses to comply with any such requirement as is mentioned in paragraph (e) or (f) of that subsection,
- shall be guilty of an offence under this Act.
- (9) Neither an enforcement officer nor a person assigned to assist him in his duties shall be liable in any civil or criminal proceedings for anything done in purported exercise of any of the powers conferred by subsection (5) above if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (10) Nothing in this section shall have effect so as to prejudice the exercise of any powers exercisable apart from this section.
- (11) Any reference in this section, in relation to a person assigned to assist an enforcement officer in his duties, to the exercise of any of the powers conferred by subsection (5) above is a reference to the exercise by that person of any of those powers on behalf of that officer.”

## SCHEDULE 17

Section 176.

### INFORMATION ABOUT PROGRAMMES: COPYRIGHT

#### PART I

##### COPYRIGHT LICENSING

- 1
- (1) This paragraph applies where the person providing a programme service has assigned to another the copyright in works containing information to which this Schedule applies.
  - (2) The person providing the programme service, not the assignee, is to be treated as the owner of the copyright for the purposes of licensing any act restricted by the copyright done on or after the day on which this paragraph comes into force.
  - (3) Where the assignment by the person providing the programme service occurred before 29th September 1989 then, in relation to any act restricted by the copyright so assigned—
    - (a) sub-paragraph (2) does not have effect, and
    - (b) references below in this Schedule to the person providing the programme service are to the assignee.

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## PART II

### USE OF INFORMATION AS OF RIGHT

#### *Circumstances in which right available*

- 2 (1) Paragraph 4 applies to any act restricted by the copyright in works containing information to which this Schedule applies done by the publisher if—
- (a) a licence to do the act could be granted by the person providing the programme service but no such licence is held by the publisher,
  - (b) the person providing the programme service refuses to grant to the publisher a licence to do the act, being a licence of such duration, and of which the terms as to payment for doing the act are such, as would be acceptable to the publisher, and
  - (c) the publisher has complied with paragraph 3.
- (2) The reference in sub-paragraph (1) to refusing to grant a licence includes failing to do so within a reasonable time of being asked.
- (3) References below in this Schedule to the terms of payment are to the terms as to payment for doing any act restricted by the copyright in works containing information to which this Schedule applies.

#### *Notice of intention to exercise right*

- 3 (1) A publisher intending to avail himself of the right conferred by paragraph 4 must—
- (a) give notice of his intention to the person providing the programme service, asking that person to propose terms of payment, and
  - (b) after receiving the proposal or the expiry of a reasonable time, give reasonable notice to the person providing the programme service of the date on which he proposes to begin exercising the right and the terms of payment in accordance with which he intends to do so.
- (2) Before exercising the right the publisher must—
- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right and of the date on which he proposes to begin to do so, and
  - (b) apply to the Tribunal under paragraph 5 to settle the terms of payment.

#### *Conditions for exercise of right*

- 4 (1) Where the publisher, on or after the date specified in a notice under paragraph 3(1) (b), does any act in circumstances in which this paragraph applies, he shall, if he makes the payments required by this paragraph, be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence to do so granted by the person providing the programme service.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under paragraph 5 or, if no such order has been made—
- (a) in accordance with any proposal for terms of payment made by the person providing the programme service pursuant to a request under paragraph 3(1) (a), or

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- (b) where no proposal has been so made or the amount determined in accordance with the proposal so made appears to the publisher to be unreasonably high, in accordance with the terms of payment notified under paragraph 3(1)(b).

*Applications to settle payments*

- 5 (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under sub-paragraph (1) has effect from the date the applicant begins to exercise the right conferred by paragraph 4 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

*Application for review of order*

- 6 (1) A person exercising the right conferred by paragraph 4, or the person providing the programme service, may apply to the Tribunal to review any order under paragraph 5.
- (2) An application under sub-paragraph (1) shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, or
  - (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An order under this paragraph has effect from the date on which it is made or such later date as may be specified by the Tribunal.

**PART III**

SUPPLEMENTARY

- 7 (1) This Schedule and the <sup>M35</sup>Copyright, Designs and Patents Act 1988 shall have effect as if the Schedule were included in Chapter III of Part I of that Act, and that Act shall have effect as if proceedings under this Schedule were listed in section 149 of that Act (jurisdiction of the Copyright Tribunal).
- (2) References in this Schedule to anything done by the publisher include anything done on his behalf.
- (3) References in this Schedule to works include future works, and references to the copyright in works include future copyright.

**Marginal Citations**

M35 1988 c. 48.

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## SCHEDULE 18

Section 180.

## TRANSFER OF FUNCTIONS CONNECTED WITH TELEVISION LICENCES

## PART I

M<sup>36</sup> AMENDMENTS OF WIRELESS TELEGRAPHY ACT 1949**Marginal Citations**M<sup>36</sup> 1949 c. 54.

- 1 (1) Section 1 (licensing of wireless telegraphy) shall be amended as follows.
- (2) In subsection (1), for the words from “granted” to “any person” substitute “granted under this section—
- (a) by the Secretary of State (unless it is a television licence), or
  - (b) if it is a television licence, by the BBC;
- and any person ”.
- (3) In subsection (2), for the words from “limitations as” (where first occurring) to “including” substitute “limitations—
- (a) as the Secretary of State may think fit; or
  - (b) in the case of a television licence, as the Secretary of State may direct or (subject to any such direction) the BBC may think fit,
- including ”.
- (4) In subsection (3), before “, continue in force” insert “ or (if it is a television licence) by the BBC ”.
- (5) In subsection (4)—
- (a) after “wireless telegraphy licence” insert “ other than a television licence ”;
  - and
  - (b) at the end add “; and a television licence may be revoked, or the terms, provisions or limitations thereof varied, by the BBC (either of their own motion or to give effect to any direction of the Secretary of State under subsection (2)(b) of this section)—
    - (a) by a notice in writing served on the holder of the licence; or
    - (b) by a general notice published as mentioned above.”
- (6) At the end of the section add the following subsection—
- “(7) In this Act—
- “television licence” means a wireless telegraphy licence authorising the installation and use of a television receiver; and
- “television receiver” means television receiving apparatus of any class or description specified in regulations made by the Secretary of State under section 2 of this Act.”



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- 2 (1) Section 2 (fees and charges for wireless telegraphy licences) shall be amended as follows.
- (2) In subsection (1), for the words from “paid to” to “by the person” substitute “paid—
- (a) to the Secretary of State; or
  - (b) in the case of a television licence, to the BBC,
- by the person”.
- (3) For the first paragraph of subsection (2) substitute—
- “Notwithstanding anything in subsection (1) of this section, where—
- (a) an application for the issue or renewal of a television licence is made to the BBC by a person ordinarily resident in the United Kingdom, and
  - (b) the BBC are satisfied, by means of a certificate issued by the local authority and produced to them by the applicant, that the applicant is a blind person not resident in a public or charitable institution or in a school,
- the BBC shall, to such extent as the Secretary of State may determine, dispense with the payment of any sum which would otherwise be payable on the issue or renewal of the licence.”
- 3 In section 15(1) (entry and search of premises etc.), for the words from “authorising” down to (but not including) “and named” substitute “authorising—
- (a) any person or persons authorised in that behalf by the Secretary of State; or
  - (b) where the offence relates to the installation or use of a television receiver, any person or persons authorised in that behalf by the BBC or the Secretary of State,”.
- 4 In section 19 (interpretation), insert the following subsection after subsection (2)—
- “(2A) In this Act—
- “the BBC” means the British Broadcasting Corporation; and
  - “television licence” and “television receiver” have the meaning given by section 1(7) of this Act.”

## PART II

### <sup>M37</sup>AMENDMENTS OF PART I OF WIRELESS TELEGRAPHY ACT 1967

#### Marginal Citations

M37 1967 c. 72.

- 1 In the following provisions, namely—
- (a) subsections (1), (2), (4) and (5) of section 1 (registration of dealers),
  - (b) subsections (1), (3) and (6) of section 2 (notification and recording of transactions),

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- (c) subsection (1) of section 3 (power to call for additional information),
  - (d) subsections (1) and (2) of section 4 (service of notices, etc.), and
  - (e) subsections (3) to (5) of section 5 (offences and enforcement),
- for “the Postmaster General” wherever those words occur (which are, by virtue of section 3(1) of the <sup>M38</sup>Post Office Act 1969 and the <sup>M39</sup>Ministry of Posts and Telecommunications (Dissolution) Order 1974, to be construed as, or in certain instances as including, a reference to the Secretary of State) substitute “the BBC”.

#### Marginal Citations

**M38** 1969 c. 48.

**M39** S.I. 1974/691.

- 2 In section 1(5), for “him” substitute “them”.
- 3 In section 2(3)—
  - (a) for “him” substitute “ them ”; and
  - (b) for “he” substitute “ they ”.
- 4 In section 3(1), for “him” (where first occurring) substitute “ them ”.
- 5 In section 4(2), for “him” (wherever occurring) substitute “ them ”.
- 6 In section 5—
  - (a) in subsection (3), for “his” substitute “ their ”; and
  - (b) in subsection (5), after “came to” insert “ their or ”.
- 7 In section 6(1)—
  - (a) insert the following definition after the definition of “appointed day”—  
““the BBC” means the British Broadcasting Corporation;”; and
  - (b) at the end of the definition of “prescribed” add “ after consultation with the BBC ”.

## SCHEDULE 19

Section 183.

### THE GAELIC TELEVISION COMMITTEE: SUPPLEMENTARY PROVISIONS

#### *Status and capacity*

- 1 (1) The Committee shall be a body corporate.
- (2) The Committee shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the Committee as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under section 183 of this Act.

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### *Tenure of office and remuneration*

- 2 (1) Subject to sub-paragraph (2), each member of the Committee shall hold and vacate office in accordance with the terms of his appointment.
- (2) Any member of the Committee may at any time resign his office by notice to the Commission.
- (3) The Commission may pay to each member such remuneration and allowances as they may determine.

### *Disqualification of members of Committee for House of Commons*

- 3 In Part II of Schedule 1 to the <sup>M40</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—

“Comataidh Telebhisein Gaidhlig”.

#### **Marginal Citations**

**M40** 1975 c. 24.

### *Proceedings*

- 4 (1) Subject to paragraph 5, the quorum of the Committee and the arrangements relating to their meetings shall be such as the Committee may determine.
- (2) The arrangements may, with the approval of the Commission, provide for the discharge, under the general direction of the Committee, of any of the Committee’s functions by a committee or by one or more of the members or employees of the Committee.
- 5 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Committee shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
  - (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the Committee, or of any of their committees, with respect to that matter.
- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the Committee at which all of the other members present resolve that the member’s interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the Committee by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the Committee in order to make a disclosure which he is required to make under this paragraph if he takes

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reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.

- (5) In this paragraph references to a meeting of the Committee include references to a meeting of any of their committees.
- 6 The validity of any proceedings of the Committee shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 5.

*Employees of the Committee*

- 7 (1) The Committee may appoint such employees as they may determine with the consent of the Commission as to numbers and terms of employment.
- (2) If the Committee determine to do so in the case of any of their employees, the Committee shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the Committee may determine.
- (3) The <sup>M41</sup>Employers' Liability (Compulsory Insurance) Act 1969 shall not require insurance to be effected by the Committee.

**Marginal Citations**

**M41** 1969 c. 57.

*Financial provision*

- 8 There shall be defrayed out of the Gaelic Television Fund—
- (a) any expenses incurred by the Commission—
- (i) by virtue of paragraph 2,
- (ii) in paying the salaries of any employees of the Commission whose services have been furnished to the Committee by the Commission, or
- (iii) in connection with providing the Committee with office accommodation or other facilities;
- (b) any expenses incurred by the Committee by virtue of paragraph 7; and
- (c) with the approval of the Commission, any other expenses incurred by the Committee.

*Authentication of Committee's seal*

- 9 The application of the seal of the Committee shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.

*Presumption of authenticity of documents issued by the Committee*

- 10 Any document purporting to be an instrument issued by the Committee and to be duly executed under the seal of the Committee or to be signed on behalf of

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the Committee shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

#### *Accounts and audit*

- 11 (1) The Committee shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Commission may direct.
- (2) The accounts of the Committee shall be audited by auditors to be appointed by the Committee with the approval of the Commission.
- [<sup>F23</sup>(3) A person shall not be qualified to be appointed in pursuance of sub-paragraph (2) unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Committee shall at all reasonable times upon demand made by the Commission or by any persons authorised by them in that behalf—
- (a) afford to them full liberty to examine the accounts of the Committee; and
  - (b) furnish them with all forecasts, estimates, information and documents which they may require with respect to the financial transactions and commitments of the Committee.

#### **Textual Amendments**

**F23** Sch. 19 para. 11(3) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para.77(7).

#### *Annual reports*

- 12 (1) As soon as possible after the end of each financial year, the Committee shall prepare a general report of their proceedings during that year and transmit it to the Commission.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement.
- (3) The Commission shall send a copy of each annual report received by them in accordance with this paragraph to the Secretary of State who shall lay copies of it before each House of Parliament.

### SCHEDULE 20

Section 203(1).

#### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Parliamentary Papers Act 1840 (c. 9)*

- 1 Section 3 (protection in respect of proceedings for printing extracts from or abstracts of parliamentary papers) shall have effect as if the reference to printing included a reference to including in a programme service.

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*Law of Libel Amendment Act 1888 (c. 64)*

- 2 Section 3 (contemporary reports of proceedings before courts exercising judicial authority) shall apply in relation to reports or matters included in a programme service, and in relation to any inclusion in such a service of any such report or matter, as it applies in relation to reports and matters published in a newspaper and to publication in a newspaper.

*Children and Young Persons Act 1933 (c. 12)*

- 3 (1) In section 28 (powers of entry)—
- (a) in subsection (2)(a), omit “a cable programme studio” and for “broadcast in a cable programme” substitute “programme service”; and
  - (b) for subsection (4) substitute—
    - “(4) In this section—
    - “broadcasting studio” means a studio used in connection with the provision of a programme service;
    - “programme service” has the same meaning as in the Broadcasting Act 1990.”
- (2) Sections 39 and 49 (restriction on newspaper reports of court proceedings involving children and young persons) shall, with the necessary modifications, apply in relation to reports or matters included in a programme service, and in relation to including any such reports or matters in such a service, as they apply in relation to reports or matters published in newspapers and to publishing any matter in a newspaper.

*Children and Young Persons (Scotland) Act 1937 (c. 37)*

- 4 (1) In section 36 (power to enter studios)—
- (a) in subsection (2)(a), omit “a cable programme studio” and for “broadcast in a cable programme” substitute “programme service”; and
  - (b) for subsection (4) substitute—
    - “(4) In this section—
    - “broadcasting studio” means a studio used in connection with the provision of a programme service;
    - “programme service” has the same meaning as in the Broadcasting Act 1990”.
- (2) Section 46 (restriction on newspaper reports of court proceedings involving children and young persons) shall, with the necessary modifications, apply in relation to reports or matters included in a programme service, and in relation to including any such reports or matters in such a service, as it applies in relation to reports or matters published in newspapers and to publishing any matter in a newspaper.

*Public Bodies (Admission to Meetings) Act 1960 (c. 67)*

- 5 In section 1(7) (admission of public to meetings of local authorities and other bodies), for the words from “or for” to “licensed” substitute “ or for programme

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services (within the meaning of the Broadcasting Act 1990) other than sound or television broadcasting services ”.

*Children and Young Persons Act 1963 (c. 37)*

6 In section 37(2) (restriction on persons under 16 taking part in certain performances), for paragraph (d) substitute—

“(d) any performance not falling within paragraph (c) above but included in a programme service (within the meaning of the Broadcasting Act 1990);”.

*Licensing Act 1964 (c. 26)*

7 In section 182(1) (relaxation, with respect to licensed premises, of law relating to music and dancing licences), for the words from “or by the” to “licensed” substitute “ or of programmes included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”.

*Private Places of Entertainment (Licensing) Act 1967 (c. 19)*

8 In section 2(3) (certain private places of entertainment to require licences), for the words from “or of being” onwards substitute “ or of being included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service. ”

*Wireless Telegraphy Act 1967 (c. 72)*

9 In section 6(1) (interpretation of Part I of the Act), for the definition of “television programme” substitute—

““television programme” means a programme included in any television broadcasting or other television programme service (within the meaning of Part I of the Broadcasting Act 1990);”.

*London Cab Act 1968 (c. 7)*

10 In section 4(5) (restrictions on advertising in connection with private hire-cars), in the definition of “advertisement”, for “or by inclusion in a cable programme service” substitute “or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service”.

*Trade Descriptions Act 1968 (c. 29)*

11 In section 39(2) (interpretation), for “or in a programme included in a cable programme service” substitute “ or in any programme included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”.

*Social Work (Scotland) Act 1968 (c. 49)*

12 In section 58(1) (prohibition of publication of proceedings in a children’s hearing), for the words “broadcast or a programme included in cable programme service”—

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- (a) in the first place where they occur, substitute “ programme included in a programme service (within the meaning of the Broadcasting Act 1990) ”; and
- (b) in the second place where they occur, substitute “ programme included in such a programme service ”.

*Theatres Act 1968 (c. 54)*

- 13 In section 7(2)(b) (exceptions for performance given in certain circumstances), for sub-paragraph (iii) substitute—
- “(iii) the performance to be included in a programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service;”.

*Gaming Act 1968 (c. 65)*

F24 14

**Textual Amendments**

F24 Sch. 20 para. 14 repealed (6.5.1992) by [Bingo Act 1992 \(c. 10\)](#), ss. 1(9), 2(2)

*Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))*

- 15 (1) In section 40(2) (restriction on persons under 16 taking part in certain performances), for paragraph (d) substitute—
- “(d) any performance not falling within paragraph (c) but included in a programme service (within the meaning of the Broadcasting Act 1990);”.
- (2) In section 45 (powers of entry)—
- (a) in subsection (2)(a), omit “a cable programme studio” and for “broadcast in a cable programme” substitute “programme service”; and
  - (b) for subsection (5) substitute—
- “(5) In this section—
- “broadcasting studio” means a studio used in connection with the provision of a programme service;
- “programme service” has the same meaning as in the Broadcasting Act 1990.”
- (3) In section 59 (power to prohibit publication of certain matter in newspapers and broadcasts)—
- (a) in subsection (1)—
- (i) in paragraph (a), for “in any newspaper or in any broadcast” substitute “which is published in any newspaper or included in any programme service (within the meaning of the Broadcasting Act 1990)”; and



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- (ii) in paragraph (b), for “in any television broadcast” substitute “included in any such service”; and
  - (b) in subsection (2), after “publishes” insert “or includes in a programme service”.
- (4) In section 68 (restrictions on newspaper and broadcast reports of proceedings in juvenile courts)—
- (a) in subsection (1)—
    - (i) in paragraph (a), for the words from “in any newspaper” to “court” substitute “of any proceedings in a juvenile court which is published in any newspaper or included in any programme service (within the meaning of the Broadcasting Act 1990)”; and
    - (ii) in paragraph (b), for “in any television broadcast” substitute “included in any such service”; and
  - (b) in subsection (3), after “publishes” insert “or includes in a programme service”.

*Local Government Act 1972 (c. 70)*

- 16 In section 100K (interpretation and application of Part VA of the Act), in paragraph (b) of the definition of “newspaper”, for sub-paragraph (ii) substitute—
- “(ii) for inclusion in programmes to be included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service;”.

*Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))*

- 17 In section 148(1) (interpretation), in the definition of “newspaper”, for the words from “or for” onwards substitute “or for programmes to be included in a programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service;”.

*Employment Agencies Act 1973 (c. 35)*

- 18 In section 13(4) (interpretation), for paragraphs (c) and (d) substitute “or
- (c) to providing a programme service (within the meaning of the Broadcasting Act 1990).”

*Northern Ireland Constitution Act 1973 (c. 36)*

- 19 In Schedule 3 (minimum reserved matters), in paragraph 14, for the words from “, (including” onwards substitute “and the provision of programme services (within the meaning of the Broadcasting Act 1990).”

*Fair Trading Act 1973 (c. 41)*

- 20 In section 133(2)(a) (exceptions to restriction on disclosure of information), after “the Electricity Act 1989,” insert “or the Broadcasting Act 1990,”.

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*Criminal Procedure (Scotland) Act 1975 (c. 21)*

- 21 In subsection (2) of sections 169 and 374 (restrictions on report of proceedings involving person under 16), for the words from “broadcasts” to “service” substitute “ programmes included in a programme service (within the meaning of the Broadcasting Act 1990) ”.

*Industry Act 1975 (c. 68)*

- 22 <sup>F25</sup> .....

**Textual Amendments**

- F25** Sch. 20 para. 22 repealed (06.01.1992) by [British Technology Group Act 1991 \(c. 66, SIF 64\)](#), s. 17(2), [Sch. 2, Pt.I; S.I. 1991/2721, art.2](#).

*Scottish Development Agency Act 1975 (c. 69)*

- 23 In section 17 (the Scottish Development Agency and the media), for “Cable and Broadcasting Act 1984” substitute “ Broadcasting Act 1990 ”.

*Welsh Development Agency Act 1975 (c. 70)*

- 24 In section 19 (the Welsh Development Agency and the media)—
- (a) in subsection (1), for paragraphs (b) and (c) substitute—
    - “(b) shall become the holder of a relevant licence.”;
  - (b) in subsection (3), for paragraphs (ii) and (iii) substitute—
    - “(ii) activities connected with the provision of a service under a relevant licence.”;
  - (c) in subsection (9)—
    - (i) for “a programme contractor, they shall consult the Independent Broadcasting Authority” substitute “ the holder of a relevant licence, they shall consult the appropriate authority ”; and
    - (ii) for “that Authority” substitute “ the appropriate authority ”;
  - (d) omit subsection (9A);
  - (e) in subsection (10), for “programme contractor” substitute “ holder of a relevant licence ”; and
  - (f) for subsection (11) substitute—
    - “(11) In this section—
      - “appropriate authority” means—
        - (a) in relation to a licence granted under Part I of the Broadcasting Act 1990, the Independent Television Commission; and
        - (b) in relation to a licence granted under Part III of that Act, the Radio Authority;
      - “relevant licence” means a licence granted by the Independent Television Commission or the Radio Authority under Part I or (as the case may be) Part III of that Act.”

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*Restrictive Trade Practices Act 1976 (c. 34)*

- 25 In section 41(1)(a) (exceptions to restriction on disclosure of information), after “the Electricity Act 1989” insert “ or the Broadcasting Act 1990 ”.

*Sexual Offences (Amendment) Act 1976 (c. 82)*

- 26 (1) In section 4 (anonymity of complainants in rape etc. cases)—
- (a) in subsection (1), for “broadcast or included in a cable programme”, in each place where those words occur, substitute “included in a relevant programme for reception” and for “broadcasting or inclusion in a cable programme” substitute “inclusion in a relevant programme”;
  - (b) in subsection (5), for “broadcast or included in a cable programme” substitute “or included in a relevant programme” and for paragraphs (c) and (d) substitute “and
    - (c) in the case of matter included in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;
  - (c) in subsection (5A), for “or broadcast of any matter or the inclusion of any matter in a cable programme,” substitute “of any matter or the inclusion of any matter in a relevant programme,” and for “ , broadcast or cable programme” substitute “or programme”;
  - (d) in subsection (6), omit the definitions of “a broadcast” and “cable programme” and after the definition of “complainant” insert—

““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990);” and
  - (e) in subsection (7), for “broadcast or inclusion in a cable programme” substitute “or upon matter included in a relevant programme”.
- (2) In section 5(5) (supplementary provisions), for “broadcast or cable programme in question was of” substitute “or programme in question was of, or (as the case may be) included,”.
- (3) In section 7(6) (extent to Northern Ireland), for “broadcast or inclusion in a cable programme” substitute “in, or such an inclusion of matter in a relevant programme for reception in,”.

*Sexual Offences (Northern Ireland) Order 1978 (S.I. 1978/460 (N.I.5))*

- 27 (1) In Article 6 (anonymity of complainants in rape offence cases)—
- (a) in paragraph (1), for “broadcast or included in a cable programme” substitute “included in a relevant programme for reception”;
  - (b) in paragraph (5), for “broadcast or included in a cable programme” substitute “or included in a relevant programme” and for sub-paragraphs (c) and (d) substitute “and
    - (c) in the case of matter included in a relevant programme, any body corporate which is engaged in providing the service

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- in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;
- (c) in paragraph (6), omit the definitions of “a broadcast” and “cable programme” and after the definition of “complainant” insert—
- ““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990);” and
- (d) in paragraph (7), for “broadcasting or inclusion in a cable programme” substitute “or inclusion in a relevant programme” and for “broadcast or inclusion in a cable programme” substitute “or upon matter included in a relevant programme”.
- (2) In Article 7(3) (supplementary provisions), for “broadcast or cable programme in question was of” substitute “or programme in question was of, or (as the case may be) included.”.
- (3) In Article 8(1) (anonymity of defendants in rape offence cases), for “broadcast or included in a cable programme” substitute “included in a relevant programme (as defined in Article 6(6)) for reception”.

*Competition Act 1980 (c. 21)*

- 28 In section 19(3) (exceptions to restriction on disclosure of information), after paragraph (m) insert—
- “(n) the Broadcasting Act 1990.”

*Magistrates’ Courts Act 1980 (c. 43)*

- 29 (1) In section 8 (restrictions on reports of committal proceedings)—
- (a) in subsection (1), for “broadcast or include in a cable programme” substitute “include in a relevant programme for reception”;
- (b) in subsections (2B), (4), (5) and (8), for “broadcast or included in a cable programme”, in each place where those words occur, substitute “or included in a relevant programme”;
- (c) in subsection (3), for “broadcast or include in a cable programme”, in each place where those words occur, substitute “or include in a relevant programme”;
- (d) in subsection (5), for paragraphs (c) and (d) substitute—
- “(c) in the case of the inclusion of a report in a relevant programme, any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;
- (e) in subsection (10), omit the definitions of “broadcast” and “cable programme” and after the definition of “publish” insert—
- ““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990).”
- (2) In section 71 (reports of domestic proceedings), for subsection (1) substitute—

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“(1) In the case of domestic proceedings in a magistrates’ court (other than proceedings under the Adoption Act 1976) it shall not be lawful for a person to whom this subsection applies—

- (a) to print or publish, or cause or procure to be printed or published, in a newspaper or periodical, or
- (b) to include, or cause or procure to be included, in a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Great Britain,

any particulars of the proceedings other than such particulars as are mentioned in subsection (1A) below.

(1A) The particulars referred to in subsection (1) above are—

- (a) the names, addresses and occupations of the parties and witnesses;
- (b) the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;
- (c) submissions on any point of law arising in the course of the proceedings and the decision of the court on the submissions;
- (d) the decision of the court, and any observations made by the court in giving it.

(1B) Subsection (1) above applies—

- (a) in relation to paragraph (a) of that subsection, to the proprietor, editor or publisher of the newspaper or periodical, and
- (b) in relation to paragraph (b) of that subsection, to any body corporate which provides the service in which the programme is included and to any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”;

and in subsection (2), for “subsection (1)” substitute “ subsection (1A) ”.

*Indecent Displays (Control) Act 1981 (c. 42)*

30 In section 1(4) (provisions relating to indecent displays disappplied in relation to broadcasting etc.), for paragraph (a) substitute—

- “(a) included by any person in a television broadcasting service or other television programme service (within the meaning of Part I of the Broadcasting Act 1990);”.

*Contempt of Court Act 1981 (c. 49)*

31 (1) In section 2 (limitation of scope of strict liability)—

- (a) in subsection (1), for “broadcast cable programme” substitute “ programme included in a programme service ”; and
- (b) after subsection (4) insert—

“(5) In this section “programme service” has the same meaning as in the Broadcasting Act 1990.”

(2) In section 19 (interpretation), omit the definition of “cable programme”.

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*Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (S.I. 1981/839 (N.I.20))*

- 32 In Article 11(4) (interpretation), for sub-paragraphs (c) and (d) substitute “or  
(c) to providing a programme service (within the meaning of the Broadcasting Act 1990).”

*Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26))*

- 33 (1) In Article 44 (reports of preliminary proceedings)—  
(a) in paragraphs (1) and (2), for “or published”, in each place where those words occur, substitute “, published or included in a relevant programme ”; and  
(b) after paragraph (5) insert—

“(6) In this Article “relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Northern Ireland.”

- (2) In Article 90 (reports of domestic proceedings), for paragraph (1) substitute—

“(1) A person to whom this paragraph applies shall not—

- (a) print or publish, or cause or procure to be printed or published, in a newspaper or periodical, or  
(b) include, or cause or procure to be included, in a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Northern Ireland,

any particulars of any domestic proceedings other than such particulars as are mentioned in paragraph (1A) below.

(1A) The particulars referred to in paragraph (1) above are—

- (a) the names, addresses and occupations of the parties and witnesses;  
(b) the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;  
(c) submissions on any point of law arising in the course of the proceedings, and decisions of the court on the submissions; and  
(d) the decisions of the court, and any observations made by the court in giving its decision.

(1B) Paragraph (1) above applies—

- (a) in relation to sub-paragraph (a) of that paragraph, to the proprietor, editor or publisher of the newspaper or periodical, and  
(b) in relation to sub-paragraph (b) of that paragraph, to any body corporate which provides the service in which the programme is included and to any person having functions in relation to the programme corresponding to those of an editor of a newspaper.”

*Insurance Companies Act 1982 (c. 50)*

- 34 In section 72(6) (meaning of “advertisement” for the purposes of insurance advertisements), for “or by inclusion in a cable programme service” substitute “ or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”.

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*Representation of the People Act 1983 (c. 2)*

- 35 (1) Part II shall be amended as follows.
- (2) In section 75(1)(i) (election expenses in relation to publications or broadcasts), for the words from “the Independent” onwards substitute “ or by Sianel Pedwar Cymru or in a programme included in any service licensed under Part I or III of the Broadcasting Act 1990; ”.
- (3) In section 92 (broadcasting from outside United Kingdom), for subsection (1) substitute—
- “(1) No person shall, with intent to influence persons to give or refrain from giving their votes at a parliamentary or local government election, include, or aid, abet, counsel or procure the inclusion of, any matter relating to the election in any programme service (within the meaning of the Broadcasting Act 1990) provided from a place outside the United Kingdom otherwise than in pursuance of arrangements made with—
- (a) the British Broadcasting Corporation;
- (b) Sianel Pedwar Cymru; or
- (c) the holder of any licence granted by the Independent Television Commission or the Radio Authority,
- for the reception and re-transmission of that matter by that body or the holder of that licence.”
- (4) In section 93 (broadcasting during elections)—
- (a) in subsection (1)(a), for “broadcast from a television or other wireless transmitting station in the United Kingdom” substitute—
- “(a) broadcast by the British Broadcasting Corporation or Sianel Pedwar Cymru; or
- (b) included in any service licensed under Part I or III of the Broadcasting Act 1990”;
- and
- (b) omit subsection (3).
- (5) Without prejudice to the generality of section 20(2) of the <sup>M42</sup>Interpretation Act 1978, any reference in this paragraph to a provision of the Representation of the <sup>M43</sup>People Act 1983 includes a reference to that provision as applied by any regulations made under paragraph 2 of Schedule 1 to the <sup>M44</sup>European Parliamentary Elections Act 1978.

**Marginal Citations**

**M42** 1978 c. 30.

**M43** 1983 c. 2.

**M44** 1978 c. 10.

*National Audit Act 1983 (c. 44)*

- 36 In Part II of Schedule 4 (nationalised industries and other public authorities liable to examination by Comptroller and Auditor General), for the entries relating to

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the Independent Broadcasting Authority and the Welsh Fourth Channel Authority substitute—

“Sianel Pedwar Cymru.”

*Value Added Tax Act 1983 (c. 55)*

VALID FROM 01/01/1993

- 37 In section 20 (refund of value added tax in certain cases)—
- (a) in subsection (3), for paragraph (j) substitute—
- “(j) a nominated news provider, as defined by section 31(3) of the Broadcasting Act 1990;”;
- (b) after subsection (4) insert—
- “(4A) No tax shall be refunded under this section to a nominated news provider which in the opinion of the Commissioners is attributable to activities other than the provision of news programmes for broadcasting by holders of regional Channel 3 licences (within the meaning of Part I of the Broadcasting Act 1990).”

*Telecommunications Act 1984 (c. 12)*

- 38 (1) In section 6 (exceptions to prohibition on the running of unlicensed telecommunication systems)—
- (a) omit subsection (1) (exception for the running of a telecommunication system by a broadcasting authority);
- (b) in subsection (2), for “such a system as is mentioned in subsection (1) above” substitute “ a telecommunication system to which subsection (2A) below applies ”; and
- (c) after subsection (2) insert the following subsection—
- “(2A) This subsection applies to a telecommunication system in the case of which every conveyance made by it is either—
- (a) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in paragraph (c) of section 4(1) above; or
- (b) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted.”
- (2) In section 7 (power to license telecommunication systems)—
- (a) in subsection (10A), for “Cable Authority” substitute “ Independent Television Commission ”; and
- (b) in subsection (10B), for “licensable cable programme service” substitute “ local delivery service (within the meaning of Part II of the Broadcasting Act 1990) ”.



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- (3) In section 42(2) (fraudulent use of telecommunication system), for “to which section 53 of the Cable and Broadcasting Act 1984 applies)” substitute “ such as is mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988) ”.
- (4) In section 43(2) (improper use of public telecommunication system), for “cable programme service” substitute “ programme service (within the meaning of the Broadcasting Act 1990) ”.
- (5) In section 49 (investigation of complaints by the Director General of Telecommunications) omit subsection (2).

*Video Recordings Act 1984 (c. 39)*

- 39 In section 3(8) (exempted supplies), for paragraphs (a) and (b) substitute “ a programme service (within the meaning of the Broadcasting Act 1990) ”.

*Cinemas Act 1985 (c. 13)*

- 40 In section 21(1) (interpretation), in the definition of “film exhibition”, for paragraphs (a) and (b) substitute “ programmes included in a programme service (within the meaning of the Broadcasting Act 1990); ”.

*Bankruptcy (Scotland) Act 1985 (c. 66)*

- 41 In subsection (5) of section 70 (supplies by utilities), for the words from “services”, where it second occurs, onwards substitute “ local delivery services within the meaning of Part II of the Broadcasting Act 1990 ”.

*Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I.11))*

- 42 In Article 130(8) (definition of “advertisement” for the purposes of restrictions on advertisements relating to gaming), after “television,” insert “ or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service, ”.

*Insolvency Act 1986 (c. 45)*

- 43 In sections 233(5)(d) and 372(5)(c) (supplies of gas, water, electricity and telecommunication services), for the words “services consisting” onwards, in each place where they occur, substitute “ local delivery services within the meaning of Part II of the Broadcasting Act 1990. ”

*Building Societies Act 1986 (c. 53)*

- 44 In section 50(10) (powers to control advertising), in the definition of “advertisement”, for the words from “whether” to “and references” substitute “whether—
- (a) documentary,
  - (b) by way of sound broadcasting or television or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service, or

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(c) by any pictorial means not falling within paragraph (a) or (b) above;  
and references ”.

*Financial Services Act 1986 (c. 60)*

- 45 (1) In section 207 (interpretation)—
- (a) in subsection (2), after “television” insert “ or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service ”; and
  - (b) omit subsection (4).
- (2) In paragraph 25A in Part III of Schedule 1 (advice given in sound, television or cable programmes excluded from activities constituting investment business)—
- (a) in sub-paragraph (1), for the words from “or teletext” onwards substitute “ included, or made for inclusion, in a programme service. ”; and
  - (b) for sub-paragraph (2) substitute—
    - “(2) In this paragraph—
    - (a) “programme”, in relation to a programme service, includes an advertisement and any other item included in that service; and
    - (b) “programme service” has the same meaning as in the Broadcasting Act 1990.”

*Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I.3))*

- 46 In Article 2(2) (interpretation), in the definition of “newspaper”, for the words from “cable programme” onwards substitute “ programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service; ”.

*Criminal Justice Act 1987 (c. 38)*

- 47 In section 11 (restrictions on reporting applications for dismissal and preparatory hearings)—
- (a) in subsection (1), for “broadcast or include in a cable programme” substitute “include in a relevant programme for reception”;
  - (b) in subsections (4), (8) and (12), for “, broadcast or included in a cable programme” substitute “or included in a relevant programme”;
  - (c) in subsections (5) and (7), for “, broadcast or include in a cable programme” substitute “or include in a relevant programme”;
  - (d) in subsection (10), for “broadcast or included in a cable programme” substitute “included in a relevant programme” and for “, broadcast or inclusion in a cable programme” substitute “or inclusion in a relevant programme”;
  - (e) in subsection (12), for paragraphs (c) and (d) substitute—
    - “(c) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the

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programme corresponding to those of an editor of a newspaper.”; and

- (f) in subsection (15), omit the definitions of “broadcast” and “cable programme” and after the definition of “publish” insert—

““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990).”

*Consumer Protection Act 1987 (c. 43)*

48 In section 24 (defences to offence of giving misleading price indication)—

- (a) in subsection (2), for the words from “, film” to “service,” substitute “ or film or in a programme included in a programme service (within the meaning of the Broadcasting Act 1990), ”; and
- (b) in subsection (6), omit the definition of “cable programme service”.

*Consumer Protection (Northern Ireland) Order 1987 (S.I.1987/2049 (N.I.20))*

49 In Article 17 (defences to offence of giving misleading price indication)—

- (a) in paragraph (2), for “film or radio or television broadcast or in a programme included in a cable programme service,” substitute “ or film or in a programme included in a programme service (within the meaning of the Broadcasting Act 1990), ”; and
- (b) in paragraph (6), omit the definition of “cable programme service”.

*Copyright, Designs and Patents Act 1988 (c. 48)*

50 (1) In section 69 (recording for purposes of supervision and control of broadcasts etc.), for subsections (2) and (3) substitute—

“(2) Copyright is not infringed by anything done in pursuance of—

- (a) section 11(1), 95(1), 145(4), (5) or (7), 155(3) or 167(1) of the Broadcasting Act 1990;
- (b) a condition which, by virtue of section 11(2) or 95(2) of that Act, is included in a licence granted under Part I or III of that Act; or
- (c) a direction given under section 109(2) of that Act (power of Radio Authority to require production of recordings etc.).

(3) Copyright is not infringed by—

- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act; or
- (b) the use by the Broadcasting Complaints Commission or the Broadcasting Standards Council, in connection with any complaint made to them under that Act, of any recording or transcript requested or required to be provided to them, and so provided, under section 145(4) or (7) or section 155(3) of that Act.”

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(2) In paragraph 17 of Schedule 2 (rights in performances: recordings for purposes of supervision and control of broadcasts etc.), for sub-paragraphs (2) to (4) substitute—

“(2) The rights conferred by Part II are not infringed by anything done in pursuance of—

- (a) section 11(1), 95(1), 145(4), (5) or (7), 155(3) or 167(1) of the Broadcasting Act 1990;
- (b) a condition which, by virtue of section 11(2) or 95(2) of that Act, is included in a licence granted under Part I or III of that Act; or
- (c) a direction given under section 109(2) of that Act (power of Radio Authority to require production of recordings etc.).

(3) The rights conferred by Part II are not infringed by—

- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act; or
- (b) the use by the Broadcasting Complaints Commission or the Broadcasting Standards Council, in connection with any complaint made to them under that Act, of any recording or transcript requested or required to be provided to them, and so provided, under section 145(4) or (7) or section 155(3) of that Act.”

*Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915)*

51 (1) In regulation 2(1) (interpretation)—

(a) omit the definitions of “broadcast advertisement”, “Cable Authority”, “IBA” and “licensable service”;

(b) before the definition of “court” insert—

““the Commission” means the Independent Television Commission”;

(c) for the definition of “licensed service” insert—

““licensed service” means—

- (a) in relation to a complaint made to the Commission, a service in respect of which the Commission have granted a licence under Part I or II of the Broadcasting Act 1990; and
- (b) in relation to a complaint made to the Radio Authority, a service in respect of which the Radio Authority have granted a licence under Part III of that Act;

and “licensed local delivery service” means a service in respect of which the Commission have granted a licence under Part II of that Act; ”; and

(d) after the definition of “publication” insert—

““relevant body” means the Commission or the Radio Authority;

“on S4C” has the same meaning as in Part I of the Broadcasting Act 1990;

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“the Welsh Authority” has the same meaning as in that Act;”.

- (2) In regulation 4(2) (exceptions to complaints to be considered by Director General of Fair Trading), for “the IBA or the Cable Authority” substitute “ the Commission, the Radio Authority or the Welsh Authority ”.
- (3) For regulations 8 to 11 substitute—

#### **“COMPLAINTS TO THE COMMISSION AND THE RADIO AUTHORITY**

- 8 (1) Subject to paragraph (2) below, it shall be the duty of a relevant body to consider any complaint made to it that any advertisement included or proposed to be included in a licensed service is misleading, unless the complaint appears to the body to be frivolous or vexatious.
- (2) The Commission shall not consider any complaint about an advertisement included or proposed to be included in a licensed local delivery service by the reception and immediate re-transmission of broadcasts made by the British Broadcasting Corporation.
- (3) A relevant body shall give reasons for its decisions.
- (4) In exercising the powers conferred on it by these Regulations a relevant body shall have regard to all the interests involved and in particular the public interest.

#### **CONTROL BY THE COMMISSION AND THE RADIO AUTHORITY OF MISLEADING ADVERTISEMENTS**

- 9 (1) If, having considered a complaint about an advertisement pursuant to regulation 8(1) above, it considers that the advertisement is misleading, a relevant body may, if it thinks it appropriate to do so, exercise in relation to the advertisement the power conferred on it—
  - (a) where the relevant body is the Commission, by section 9(6) of the Broadcasting Act 1990 (power of Commission to give directions about advertisements), or
  - (b) where the relevant body is the Radio Authority, by section 93(6) of that Act (power of Radio Authority to give directions about advertisements).
- (2) A relevant body may require any person appearing to it to be responsible for an advertisement which the body believes may be misleading to furnish it with evidence as to the accuracy of any factual claim made in the advertisement. In deciding whether or not to make such a requirement the body shall have regard to the legitimate interests of any person who would be the subject of or affected by the requirement.
- (3) If such evidence is not furnished to it following a requirement made by it under paragraph (2) above or if it considers such evidence inadequate, a relevant body may consider the factual claim inaccurate.

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### COMPLAINTS TO THE WELSH AUTHORITY

- 10 (1) Subject to paragraph (2) below, it shall be the duty of the Welsh Authority to consider any complaint made to them that any advertisement broadcast or proposed to be broadcast on S4C is misleading, unless the complaint appears to the Authority to be frivolous or vexatious.
- (2) The Welsh Authority shall not consider any complaint about an advertisement broadcast or proposed to be broadcast on S4C by the reception and immediate re-transmission of broadcasts made by the British Broadcasting Corporation.
- (3) The Welsh Authority shall give reasons for their decisions.
- (4) In exercising the powers conferred on them by these Regulations the Welsh Authority shall have regard to all the interests involved and in particular the public interest.

### CONTROL BY THE WELSH AUTHORITY OF MISLEADING ADVERTISEMENTS

- 11 (1) If, having considered a complaint about an advertisement pursuant to regulation 10(1) above, they consider that the advertisement is misleading, the Welsh Authority may, if they think it appropriate to do so, refuse to broadcast the advertisement.
- (2) The Welsh Authority may require any person appearing to them to be responsible for an advertisement which the Authority believe may be misleading to furnish them with evidence as to the accuracy of any factual claim made in the advertisement. In deciding whether or not to make such a requirement the Authority shall have regard to the legitimate interests of any person who would be the subject of or affected by the requirement.
- (3) If such evidence is not furnished to them following a requirement made by them under paragraph (2) above or if they consider such evidence inadequate, the Welsh Authority may consider the factual claim inaccurate.”

*Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (S.I.1988/1846 (N.I.16))*

52 In Article 10 (restrictions on reporting applications for dismissal and preparatory hearings)—

- (a) in paragraph (1), for “broadcast or include in a cable programme” substitute “include in a relevant programme for reception”;
- (b) in paragraphs (5), (9) and (13), for “, broadcast or included in a cable programme” substitute “or included in a relevant programme”;
- (c) in paragraphs (6) and (8), for “, broadcast or include in a cable programme” substitute “or include in a relevant programme”;
- (d) in paragraph (12), for “broadcast or included in a cable programme” substitute “included in a relevant programme” and for “, broadcast or inclusion in a cable programme” substitute “or inclusion in a relevant programme”;

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- (e) in paragraph (13), for sub-paragraphs (c) and (d) substitute—
- “(c) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;” and
- (f) in paragraph (16), omit the definitions of “broadcast” and “cable programme” and after the definition of “publish” insert—
- ““relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990).”

*Children Act 1989 (c. 41)*

- 53 In section 97(5) (privacy for children involved in certain proceedings), for paragraph (a) of the definition of “publish” substitute—
- “(a) include in a programme service (within the meaning of the Broadcasting Act 1990);”.

*Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19))*

- 54 In Articles 197(3) and 343(4) (supplies of water, electricity and telecommunication services), for the words from “services consisting” onwards, in each place where they occur, substitute “local delivery services within the meaning of Part II of the Broadcasting Act 1990.”

SCHEDULE 21

Section 203(3).

REPEALS

Chapter	Short title	Extent of repeal
1933 c. 12.	Children and Young Persons Act 1933.	In section 28(2)(a), the words “a cable programme studio”.
1937 c. 37.	Children and Young Persons (Scotland) Act 1937.	In section 36(2)(a), the words “a cable programme studio”.
1949 c. 54.	Wireless Telegraphy Act 1949.	Section 14(1B)(a).  In section 15, in subsection (1) the words “and named in the warrant”, and in subsection (2) the words “and named in the authorisation”.
1952 c. 66.	Defamation Act 1952.	Section 1.
1955 c. 7.	Wireless Telegraphy (Blind Persons) Act 1955.	The whole Act.

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1955 c. 11 (N.I.).	Defamation Act (Northern Ireland) 1955.	Section 1.
1959 c. 66.	Obscene Publications Act 1959.	In section 1, the proviso to subsection (3).
1967 c. 72.	Wireless Telegraphy Act 1967.	Section 3(2).  Section 5(2).
1968 c. 34 (N.I.).	Children and Young Persons Act (Northern Ireland) 1968.	In section 45(2)(a), the words “a cable programme studio”.
1973 c. 41.	Fair Trading Act 1973.	In Schedule 7, in Part I, paragraphs 8 and 9.
1975 c. 24.	House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Cable Authority, the Independent Broad-casting Authority and the Welsh Fourth Channel Authority.
1975 c. 25.	Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Cable Authority and the Independent Broad-casting Authority.
1975 c. 68.	Industry Act 1975.	Section 9(9A).
1975 c. 70.	Welsh Development Agency Act 1975.	Section 19(9A).
1976 c. 82.	Sexual Offences (Amendment) Act 1976.	In section 4(6), the definitions of “a broadcast” and “cable programme”.
S.I. 1978/460 (N.I.5).	Sexual Offences (Northern Ireland) Order 1978.	In Article 6(6), the definitions of “a broadcast” and “cable programme”.
1980 c. 43.	Magistrates Courts Act 1980.	In section 8(10), the definitions of “broadcast” and “cable programme”.
1980 c. 65.	Local Government, Planning and Land Act 1980.	In Schedule 16, paragraph 16.
1981 c. 49.	Contempt of Court Act 1981.	In section 19, the definition of “cable programme”.
1981 c. 68.	Broadcasting Act 1981.	The whole Act.
1982 c. 39.	Finance Act 1982.	Section 144(3).
1982 c. 45.	Civic Government (Scotland) Act 1982.	In section 51, subsection (6) (a) and, in subsection (8), in the definition of “material” the words from “and”



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		onwards, and the word “showing”.
1983 c. 2.	Representation of the People Act 1983.	Section 93(3).
1984 c. 12.	Telecommunications Act 1984.	Section 6(1).  Section 49(2).  In section 79(2), the words “or them”.  In Schedule 4, paragraph 81.  In Schedule 5, paragraphs 8(1) and (3) and 30.
1984 c. 46.	Cable and Broadcasting Act 1984.	The whole Act.
1985 c. 9.	Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2, the entries relating to the Broadcasting Act 1981.
1986 c. 41.	Finance Act 1986.	Section 111.  Schedule 22.
1986 c. 60.	Financial Services Act 1986.	Section 207(4).
1986 c. 64.	Public Order Act 1986.	In section 22, in subsection (2) the words “broad- casting or cable”, in subsections (4)(b) and (5)(b) the words “broad- cast or”, wherever occur- ring, and subsections (7) and (8).  Section 23(4).  In section 29, the definitions of “broadcast” and “cable programme service”.  In Schedule 2, paragraphs 5 and 6.
1987 c. 10.	Broadcasting Act 1987.	The whole Act.
1987 c. 38.	Criminal Justice Act 1987.	In section 11(15), the definitions of “broadcast” and “cable programme”.
1987 c. 43.	Consumer Protection Act 1987.	In section 24(6), the definition of “cable programme service”.
S.I.1987/463 (N.I.7).	Public Order (Northern Ireland) Order 1987.	In Article 12, in paragraph (2)(a) the words “broad- casting or cable”,

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		in paragraphs (4)(b) and (5) (b) the words “broadcast or”, wherever occurring, and paragraphs (7) and (8). Article 13(4). In Article 17, the definitions of “broadcast” and “cable programme service”.
S.I.1987/2049 (N.I.20).	Consumer Protection (Northern Ireland) Order 1987.	In Article 17(6), the definition of “cable programme service”.
1988 c. 40.	Education Reform Act 1988.	In Schedule 12, paragraph 49.
1988 c. 48.	Copyright, Designs and Patents Act 1988.	In section 73, subsection (2) (a) and the word “or” immediately following it, and subsection (3)(a) and the word “or” immediately following it. Section 134(4). Section 299(2). In Schedule 2, paragraph 19(2)(a) and the word “or” immediately following it. In Schedule 7, paragraphs 29 and 30.
S.I.1988/915.	Control of Misleading Advertisements Regulations 1988.	In regulation 2(1), the definitions of “broadcast advertisement”, “Cable Authority”, “IBA” and “licensable service”.
S.I.1988/1846 (N.I.16).	Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988.	In Article 10(16), the definitions of “broadcast” and “cable programme”.
1989 c. 26.	Finance Act 1989.	Section 181. Schedule 16.

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## SCHEDULE 22

Section 203(4).

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *Preservation of appointments of existing members of the Welsh Authority, the BCC and the BSC*

- 1
- (1) Where, immediately before the date when the relevant section of this Act comes into force, any person holds office as chairman, deputy chairman or other member of the Welsh Authority, the BCC or the BSC, he shall continue to hold office as from that date as if he had been appointed under that section.
  - (2) Except in so far as the Secretary of State may otherwise determine, any such person shall hold office as from that date in accordance with the terms of his original appointment.
  - (3) In this paragraph “the relevant section of this Act” means—
    - (a) in relation to the Welsh Authority, section 56;
    - (b) in relation to the BCC, section 142; and
    - (c) in relation to the BSC, section 151.
  - (4) In this paragraph and in paragraph 2 “the BCC” means the Broadcasting Complaints Commission and “the BSC” means the Broadcasting Standards Council.

#### *Power to make provision with respect to complaints to the BCC or BSC*

- 2
- (1) The Secretary of State may by order make such transitional provision as he considers appropriate in connection with—
    - (a) the making, on or after the transfer date, of complaints to the BCC concerning programmes broadcast by the IBA before that date and the performance by the BCC, on or after that date, of functions in connection with complaints made to them about such programmes (whether so made before that date or by virtue of this paragraph), and
    - (b) the making, on or after the relevant date, of complaints to the BCC or the BSC concerning programmes broadcast in accordance with Schedule 11 and the performance by the BCC and the BSC respectively, on or after that date, of functions in connection with complaints made to them about such programmes (whether so made before that date or by virtue of this paragraph);and (subject to sub-paragraph (4)) references in this sub-paragraph to the performance of functions are, in relation to the BCC, references to the performance of functions under Part V of this Act and, in relation to the BSC, are references to the performance of functions under Part VI of this Act.
  - (2) Without prejudice to the generality of sub-paragraph (1), an order under that sub-paragraph may provide that, in relation to complaints falling within that sub-paragraph, the BCC or (as the case may be) the BSC may give directions in pursuance of section 146 or (as the case may be) 156 of this Act to persons other than those referred to in section 146(1) or 156(1).
  - (3) Without prejudice to the generality of section 200(2)(b) of this Act, an order under sub-paragraph (1) may make—
    - (a) such transitional modifications of any provision of this Act, and

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(b) such modifications of and savings in any other statutory provision, as the Secretary of State considers appropriate.

(4) In this paragraph—

(a) “the relevant date” means—

(i) in the case of a complaint concerning a television programme, the day after the end of the interim period within the meaning of Schedule 11, and

(ii) in the case of a complaint concerning a sound programme, the day after the end of the period during which the local sound broadcasting service in which it was broadcast was provided in accordance with Schedule 11,

(b) “the transfer date” means the day appointed under section 127(1) of this Act,

(c) “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment,

(d) “the IBA” means the Independent Broadcasting Authority, and

(e) references to programmes include references to teletext transmissions,

and in connection with complaints to the BCC concerning programmes broadcast by the IBA before the transfer date, a reference to Part V of this Act or to any provision of that Part includes a reference to Part III of the <sup>M45</sup>Broadcasting Act 1981 or (as the case may be) to any corresponding provision of that Part of that Act.

#### Marginal Citations

M45 1981 c. 68.

#### *Power to make provision with respect to complaints under the Control of Misleading Advertisements Regulations 1988*

3 (1) The Secretary of State may by order make such transitional provision as he considers appropriate in connection with—

(a) the making, on or after the transfer date, of complaints to the relevant authority concerning advertisements included before that date in any programme or teletext transmission broadcast by the IBA or in any licensed service; and

(b) the performance by each of the relevant authorities, on or after that date, of functions under the <sup>M46</sup>Control of Misleading Advertisements Regulations 1988 in relation to complaints concerning such advertisements (whether made before that date or by virtue of paragraph (a)).

(2) In sub-paragraph (1) “the relevant authority”—

(a) in relation to an advertisement included in—

(i) a television programme, other than one broadcast on the Fourth Channel in Wales,

(ii) a teletext transmission, or

(iii) a licensed service,

means the Independent Television Commission;

(b) in relation to an advertisement included in a television programme broadcast on the Fourth Channel in Wales, means the Welsh Authority; and

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(c) in relation to an advertisement included in a sound programme, means the Radio Authority.

(3) In this paragraph—

- (a) “the transfer date” means the day appointed under section 127(1) of this Act,
- (b) “the Fourth Channel in Wales” has the same meaning as in Part II of the Broadcasting Act 1981, and
- (c) “the IBA” means the Independent Broadcasting Authority;

and expressions used in this paragraph which are also used in the Control of Misleading Advertisements Regulations 1988 (as they have effect without the amendments made by paragraph 51 of Schedule 20 to this Act) have the same meaning as in those Regulations.

**Marginal Citations**

M46 S.I. 1988/915.

*Saving of amendments made by Cable and Broadcasting Act 1984*

- 4 The amendments made by paragraphs 12, 24, 32 and 45 of Schedule 5 to the <sup>M47</sup>Cable and Broadcasting Act 1984 shall not be affected by the repeals made by this Act but shall continue to have effect, subject to any amendments made by Schedule 20 to this Act.

**Marginal Citations**

M47 1984 c. 46.

*Transitional modification of amendments made by this Act*

- 5 (1) Any provision to which this sub-paragraph applies—
- (a) shall have effect in relation to the programme contractor or teletext contractor under a contract which continues in force by virtue of Part II of Schedule 11 to this Act, or in relation to any such contract, as it has effect in relation to the holder of a licence granted under Part I of this Act or in relation to any such licence;
  - (b) shall have effect in relation to the programme contractor under a contract which continues in force by virtue of Part IV of Schedule 11, or in relation to any such contract, as it has effect in relation to the holder of a licence granted under Part III of this Act or in relation to any such licence; and
  - (c) shall have effect in relation to any broadcasting service provided by the Independent Television Commission or the Radio Authority in accordance with Schedule 11 as it has effect in relation to any service provided under a licence granted under Part I or Part III of this Act.

(2) Sub-paragraph (1) applies to the following provisions (as amended by this Act), namely—

- <sup>F26</sup>(a) .....

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- (b) section 19 of the <sup>M48</sup>Welsh Development Agency Act 1975;
  - (c) sections 75(1) and 93(1) of the Representation of the <sup>M49</sup>People Act 1983; and
  - (d) regulation 8(1) of the <sup>M50</sup>Control of Misleading Advertisements Regulations 1988.
- (3) Where regulation 8(1) of the Control of Misleading Advertisements Regulations 1988 has effect in relation to any complaint in accordance with sub-paragraphs (1) and (2) above, regulation 9(1) of those Regulations shall have effect in relation to the complaint as if for the words from “exercise” onwards there were substituted “refuse to broadcast the advertisement”.

#### Textual Amendments

**F26** Sch. 22 para. 5(2)(a) repealed (6.1.1992) by [British Technology Group Act 1991 \(c. 66, SIF 64\), s. 17\(2\), Sch. 2 Pt.I](#); S.I. 1991/2721, [art.2](#)

#### Marginal Citations

**M48** 1975 c. 70.

**M49** 1983 c. 2.

**M50** S.I. 1988/915.

- 6 Section 92(1) of the Representation of the People Act 1983 (as amended by this Act), shall have effect as if—
- (a) the reference to the holder of a licence granted by the Independent Television Commission or the Radio Authority included a reference to the holder of a relevant licence within the meaning of Part III of Schedule 12 to this Act; and
  - (b) there were added at the end “or in pursuance of arrangements made with—
    - (i) the Independent Television Commission or the Radio Authority, or
    - (ii) any programme contractor whose contract continues in force by virtue of Part II or IV of Schedule 11 to the Broadcasting Act 1990,

for the matter to be received by that body or contractor and re-transmitted by that body in the provision of any broadcasting service in accordance with the said Schedule 11.”
- 7 Regulation 8(1) and (2) of the Control of Misleading Advertisements Regulations 1988 (as amended by this Act) shall apply to any service provided under a relevant licence within the meaning of Part III of Schedule 12 to this Act as they apply to a service licensed under Part II of this Act.

**Status:**

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