



Broadcasting Act 1990

1990 CHAPTER 42

^{F1}PART I

INDEPENDENT TELEVISION SERVICES

CHAPTER II

TELEVISION BROADCASTING ON CHANNELS 3, 4 AND 5

Channel 3

17 Award of licence to person submitting highest cash bid.

- (1) Subject to the following provisions of this section, [^{F1}OFCOM] shall, after considering all the cash bids submitted by the applicants for a Channel 3 licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) [^{F1}OFCOM] shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) [^{F1}OFCOM] may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.
- (4) Without prejudice to the generality of subsection (3), [^{F1}OFCOM] may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to [^{F1}OFCOM] —

Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Section 17. (See end of Document for details)

- (a) that the quality of the service proposed by such an applicant is exceptionally high; and
- (b) that the quality of that proposed service is substantially higher than the quality of the service proposed—
 - (i) by the applicant who has submitted the highest bid, or
 - (ii) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids;
 and where it appears to [F1OFCOM] , in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (5) If it appears to [F1OFCOM] , in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
 - (a) they shall refer his application to the Secretary of State, together with—
 - (i) a copy of all documents submitted to them by the applicant, and
 - (ii) a summary of their deliberations on the application; and
 - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
 - (a) paying any amounts payable by him by virtue of section 19(1), or
 - (b) otherwise financing the provision of his proposed service.
- (8) In a case where any requirement such as is mentioned in section 5(1)(b) operates to preclude [F1OFCOM] from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases; and any such rules may provide for the awarding of licences by reference to orders of preference notified to [F1OFCOM] by applicants at the time of making their applications.
- (9) Any such rules shall be published by [F1OFCOM] in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.
- (10) Where [F1OFCOM] are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (14)) have effect as if that person had not made an application for the licence.

Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Section 17. (See end of Document for details)

- (11) Where [^{F1}OFCOM] have awarded a Channel 3 licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and
 - (b) grant the licence to that person.
- (12) The matters referred to in subsection (11)(a) are—
- (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
 - (b) the name of every other applicant in whose case it appeared to [^{F1}OFCOM] that his proposed service would comply with the requirements [^{F2}that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
 - (i) the public service remit for that service,
 - (ii) programming quotas,
 - (iii) news and current affairs programmes, and
 - (iv) programme production and regional programming];
 - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, [^{F1}OFCOM]’s reasons for the licence having been so awarded; and
 - (d) such other information as [^{F1}OFCOM] consider appropriate.
- (13) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if—
- (a) paragraph (b) were omitted; and
 - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (14) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if [^{F1}OFCOM] decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if [^{F1}OFCOM] decide that it would be desirable to publish a further notice under this Part in respect of the grant of a further licence to provide the service in question.

Textual Amendments

- F1** Words in s. 17 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 9\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F2** Words in s. 17(12)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 9\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

Modifications etc. (not altering text)

- C1** Pt. I: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 3\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- C2** S. 17 applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 5\(4\)\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

Changes to legislation: There are currently no known outstanding effects
for the Broadcasting Act 1990, Section 17. (See end of Document for details)

- | | |
|-----------|--|
| C3 | Ss. 15-17A excluded (29.12.2003) by Communications Act 2003 (c. 21) , ss. 215(3) , 411(2) (with Sch. 18); S.I. 2003/3142 , art. 3(1), Sch. 1 (with art. 11) |
| C4 | S. 17(5)-(7) applied (with modifications) (29.12.2003) by Communications Act 2003 (c. 21) , ss. 222(5) , 411(2) (with s. 222(11) , Sch. 18); S.I. 2003/3142 , art. 3(1), Sch. 1 (with art. 11) |
| C5 | S. 17(5)-(7) applied (with modifications) (29.12.2003) by Communications Act 2003 (c. 21) , ss. 216(5) , 411(2) (with Sch. 18); S.I. 2003/3142 , art. 3(1), Sch. 1 (with art. 11) |

Changes to legislation:

There are currently no known outstanding effects for the Broadcasting Act 1990, Section 17.