



Broadcasting Act 1996

1996 CHAPTER 55

PART I

DIGITAL TERRESTRIAL TELEVISION BROADCASTING

Modifications etc. (not altering text)

- C1** Pt. 1: 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** Pt. 1 modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 215\(10\)\(c\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C3** Pt. 1 modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 241\(1\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

Introductory

1 Multiplex services and digital programme services.

[^{F1}(1) In this Part “multiplex service” means (except where the context otherwise requires) a television multiplex service.]

^{F2}(1A)

^{F2}(2)

^{F2}(3)

(4) In this Part “digital programme service” means a service consisting in the provision by any person of television programmes (together with any ancillary services, as defined by section 24(2)) with a view to their being broadcast in digital form [^{F3}so as to be available for reception by members of the public], whether by him or by some other person, but does not include—

- (a) a qualifying service,
- (b) a teletext service, or

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(c) any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures, except, in the case of a service falling within paragraph (b) or (c), to the extent that it is an ancillary service.

[^{F4}(4A) In subsection (4), “available for reception by members of the public” means available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003) in the United Kingdom or another EEA State, or in an area of the United Kingdom or of such a State.]

(5) The Secretary of State may, if having regard to developments in broadcasting technology he considers it appropriate to do so, by order amend the definition of “digital programme service” in subsection (4).

(6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

[^{F5}(7) In this section “broadcast” means broadcast otherwise than from a satellite.]

Textual Amendments

F1 S. 1(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 74\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

F2 S. 1(1A)-(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\) Note 1](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

F3 Words in s. 1(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 74\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

F4 S. 1(4A) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 74\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

F5 S. 1(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 74\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

2 Meaning of “independent analogue broadcaster” and “qualifying service”.

^{F6}(1)

[^{F7}(2) In this Part “qualifying service” means any of the following, so far as they are provided with a view to their being broadcast in digital form—

- (a) a television broadcasting service included in Channel 3;
- (b) Channel 4;
- (c) Channel 5;
- (d) S4C Digital;
- (e) a television programme service provided by the Welsh Authority with the approval of the Secretary of State under section 205 of the Communications Act 2003;
- (f) the digital public teletext service.]

^{F8}(7)

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Textual Amendments

- F6** S. 2(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F7** S. 2(2) substituted for s. 2(2)-(6) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 75](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F8** S. 2(6)(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

Commencement Information

- II** S. 2 wholly in force at 1.10.1996; s. 2 not in force at Royal Assent see s. 149; s. 2 in force force certain purposes at 15.9.1996 and wholly in force at 1.10.1996 by [S.I. 1996/2120](#), art. 4, [Sch. 1](#)

General provisions about licences

3 Licences under Part I.

- (1) Any licence granted by [^{F9}OFCOM] under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of this Part.
- (2) A licence may be so granted for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified.
- (3) [^{F10}OFCOM] —
 - (a) shall not grant a licence to any person 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 licence, that person does not remain the holder of the licence;and nothing in this Part shall be construed as affecting the operation of this subsection or of section 5(1) or (2)(b) or (c).
- (4) [^{F10}OFCOM] may vary a licence by a notice served on the licence holder if—
 - (a) in the case of a variation of the period for which a licence having effect for a specified period 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 [^{F10}OFCOM] about the variation.
- (5) Paragraph (a) of subsection (4) does not affect the operation of section 17(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 13(1).
- (6) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of [^{F10}OFCOM] .
- (7) Without prejudice to the generality of subsection (6), [^{F10}OFCOM] shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.

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- [^{F11}(8) The holding by a person of a licence under this Part shall not relieve him of—
- (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
 - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).]

Textual Amendments

- F9** Words in s. 3(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 76\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F10** Words in s. 3(3)-(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 76\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F11** S. 3(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 76\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

4 General licence conditions.

- (1) A licence may include—
 - (a) such conditions as appear to [^{F12}OFCOM] to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under [^{F13}this Act, the 1990 Act or the Communications Act 2003] ;
 - (b) conditions requiring the payment by the licence holder to [^{F12}OFCOM] (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
 - (c) conditions requiring the licence holder to provide [^{F12}OFCOM] , in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under [^{F14}this Act, the 1990 Act or the Communications Act 2003] ;
 - (d) conditions providing for such incidental and supplemental matters as appear to [^{F12}OFCOM] to be appropriate.
- (2) A licence may in particular include conditions requiring the licence holder—
 - (a) to comply with any direction given by [^{F12}OFCOM] as to such matters as are specified in the licence or are of a description so specified, or
 - (b) (except to the extent that [^{F12}OFCOM] 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.
- (3) The fees required to be paid to [^{F12}OFCOM] by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by [^{F12}OFCOM]^{F15}....
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and [^{F12}OFCOM] shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
 - (a) is required by virtue of any condition imposed under this Part to provide [^{F12}OFCOM] with any information, and

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- (b) in purported compliance with that condition provides them with information which is false in a material particular,
he shall be taken for the purposes of sections 17, 23 and 27 of this Act and section 42 of the 1990 Act to have failed to comply with that condition.
- (6) Nothing in this Part which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

Textual Amendments

- F12** Words in s. 4 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 77\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F13** Words in s. 4(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 77\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F14** Words in s. 4(1)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 77\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F15** Words in s. 4(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 77\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

5 Restrictions on holding of licences under Part I.

- (1) ^{F16}[OFCOM] shall do all that they can to secure—
- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to the 1990 Act (as amended by this Act); and
- ^{F17}(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
- (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) ^{F16}[OFCOM] may accordingly—
- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
- (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
- (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
- (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
- (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
- (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
- (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
- (i) shareholdings in the body, or
- (ii) the directors of the body,

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- where such proposals are known to the body;
- [^{F18}(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
- (i) shareholdings in the body; or
- (ii) the directors of the body;
- (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
- (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or
- (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
- (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- (3) Where [^{F16}OFCOM] —
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
- (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,
- any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
- (4) Those provisions shall not so have effect if [^{F16}OFCOM] decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as [^{F16}OFCOM] consider necessary or expedient to ensure that where—
- (a) the holder of the licence is a body, and
- (b) a relevant change takes place after the grant of the licence,
- [^{F16}OFCOM] may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.
- (6) [^{F16}OFCOM] shall not serve any such notice on the licence holder unless—
- (a) they have notified him of the matters [^{F19}constituting their grounds for revoking the licence] and given him a reasonable opportunity of making representations to them about those matters, and
- (b) in a case where the relevant change is one falling within subsection (7)—
- (i) they have also given him an opportunity of complying with [^{F20}the requirements imposed by or under Schedule 14 to the Communications Act 2003] within a period specified in the notification, and
- (ii) the period specified in the notification has elapsed.

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- (7) A relevant change falls within this subsection if it consists only in one or more of the following—
- ^{F21}(a)
 - (b) a change in the national market share (within the meaning of [^{F22}Part 1 of Schedule 14 to the Communications Act 2003]) of one or more national newspapers (within the meaning of that Part of that Schedule), or
 - (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (8) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—
- (a) any change affecting the nature or characteristics of the body,
 - (b) any change in the persons having control over or interests in the body, or
 - (c) any other change giving rise to [^{F23}a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,]
- being (in any case) a change which is such that, if it fell to [^{F16}OFCOM] to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

Textual Amendments

- F16** Words in s. 5 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F17** S. 5(1)(b)(c) substituted for s. 5(1)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 350\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F18** S. 5(2)(da)(db) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F19** Words in s. 5(6)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F20** Words in s. 5(6)(b)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F21** S. 5(7)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(5\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F22** Words in s. 5(7)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F23** Words in s. 5(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 78\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

Modifications etc. (not altering text)

- C4** S. 5 modified (temp.) (17.7.2003) by [The Communications Act 2003 \(Commencement No. 1\) Order 2003 \(S.I. 2003/1900\), art. 5](#)

Multiplex services

^{F24}6 Assignment of frequencies by Secretary of State.

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Textual Amendments

F24 S. 6 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

7 Multiplex licences.

- (1) Where [^{F25}OFCOM] propose to grant a licence to provide a multiplex service (in this Part referred to as a “multiplex licence”) they shall publish, in such manner as they consider appropriate, a notice—
 - (a) stating that they propose to grant such a licence,
 - (b) specifying the frequency or frequencies on which the service is to be provided,
 - (c) specifying, in such manner as [^{F25}OFCOM] consider appropriate, the area or areas in the United Kingdom within which the frequency or frequencies is or are to be available,
 - (d) inviting applications for the licence and specifying the closing date for such applications,
 - (e) specifying the fee payable on any application, and
 - (f) stating whether any percentage of multiplex revenue for each accounting period would be payable by an applicant in pursuance of section 13 if he were granted the licence and, if so, specifying that percentage.
- (2) Unless an order under section 13(2) is in force—
 - (a) the consent of the Secretary of State shall be required for so much of the notice as relates to the matters specified in subsection (1)(f), and
 - (b) [^{F25}OFCOM] may if they think fit (with that consent) specify under subsection (1)(f)—
 - (i) different percentages in relation to different accounting periods falling within the period for which the licence would be in force, and
 - (ii) a nil percentage in relation to any accounting period so falling.
- (3) When publishing a notice under subsection (1), [^{F25}OFCOM] —
 - (a) shall publish with the notice general guidance as to requirements to be met by proposals as to the matters referred to in subsection (4)(b)(i) and (ii) and (f), and
 - (b) may publish with the notice such other general guidance as they consider appropriate.
- (4) An application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
 - (a) the fee specified in the notice under subsection (1)(e),
 - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
 - (i) the parts of the area specified under subsection (1)(c) which would be within the coverage area of the service,
 - (ii) the timetable in accordance with which that coverage would be achieved, and
 - (iii) the technical means by which it would be achieved,

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- (c) the applicant's proposals as to the number of digital programme services to be broadcast, as to the characteristics of each of those services and as to the areas in which they would be provided,
 - [^{F26}(ca) the applicant's proposals as to the number (if any) of digital sound programmes services which are to be broadcast, as to the characteristics of each of those services and as to the areas in which they would be provided;]
 - (d) the applicant's proposals as to the timetable in accordance with which the broadcasting of each of [^{F27}the services mentioned in paragraphs (c) and (ca)] would begin,
 - (e) the applicant's proposals as to the broadcasting of digital additional services,
 - (f) the applicant's proposals for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving all the multiplex services available in that area,
 - (g) such information as [^{F25}OFCOM] may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
 - (h) such other information as [^{F25}OFCOM] may reasonably require for the purpose of considering the application.
- (5) In subsection (4)(f) "acquisition" includes acquisition on hire or loan.
- (6) At any time after receiving such an application and before determining it, [^{F25}OFCOM] may require the applicant to furnish additional information under any of paragraphs (b) to (h) of subsection (4).
- (7) Any information to be furnished to [^{F25}OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (8) [^{F25}OFCOM] shall, as soon as reasonably practicable after the date specified in a notice under subsection (1) as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the following matters, namely—
 - (i) the name of every person who has made an application to them in pursuance of the notice,
 - (ii) the proposals submitted by him under subsection (4)(c), and
 - (iii) such other information connected with his application as [^{F25}OFCOM] consider appropriate; and
 - (b) a notice—
 - (i) inviting representations to be made to them with respect to any of the applications, and
 - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

Textual Amendments

F25 Words in s. 7 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 79\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F26 S. 7(4)(ca) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 79\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F27 Words in s. 7(4)(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 79\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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Modifications etc. (not altering text)

- C5** S. 7(1)(f) restricted (*temp.* from 20.11.1996 to 29.9.2002) in relation to any notice published by the Commission by [S.I. 1996/2759](#), [arts. 2, 3](#)

8 Award of multiplex licences.

- (1) Where [^{F28}OFCOM] have published a notice under section 7(1), they shall in determining whether, or to whom, to award the multiplex licence in question, have regard to the extent to which, taking into account the matters specified in subsection (2) and any representations made to them in pursuance of section 7(8)(b) with respect to those matters, the award of the licence to each applicant would be calculated to promote the development of digital television broadcasting in the United Kingdom otherwise than by satellite.
- (2) The matters referred to in subsection (1) are—
- (a) the extent of the coverage area proposed to be achieved by the applicant as indicated in the technical plan submitted by him under section 7(4)(b),
 - (b) the timetables proposed by the applicant under section 7(4)(b)(ii) and (d),
 - (c) the ability of the applicant to establish the proposed service and to maintain it throughout the period for which the licence will be in force,
 - (d) the capacity of the digital programme services proposed to be included in the service to appeal to a variety of tastes and interests,
 - (e) any proposals by the applicant for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving all the multiplex services available in that area, and
 - (f) whether, in contracting or offering to contract with persons providing digital programme services [^{F29}, digital sound programme service] or digital additional services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.
- (3) In subsection (2)(e) “acquisition” includes acquisition on hire or loan.
- (4) Where [^{F28}OFCOM] have awarded a multiplex licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish in such manner as they consider appropriate—
 - (i) the name of the person to whom the licence has been awarded, and
 - (ii) such other information as [^{F28}OFCOM] consider appropriate, and
 - (b) grant the licence to that person.

Textual Amendments

- F28** Words in s. 8 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 80\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F29** Words in s. 8(2)(f) inserted (29.12.2003) by virtue of [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 80\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

Status: Point in time view as at 29/12/2003.

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9 Power to require two or more multiplex licences to be granted to one person.

- (1) [^{F30}OFCOM] may, before publishing a notice under section 7(1), determine that two or more multiplex licences are on that occasion to be granted to one person.
- (2) Where [^{F30}OFCOM] have so determined, they shall publish a single notice under section 7(1) in relation to the licences.
- (3) In relation to any application made in pursuance of such a notice—
 - (a) references in section 7(4) to the proposed service shall have effect as references to each of the proposed services,
 - (b) the reference in section 8(1) to the multiplex licence shall have effect as a reference to all the licences concerned,
 - (c) in section 8(2), the reference in paragraph (d) to the proposed service shall have effect as a reference to all the proposed services considered together, and other references to the proposed service shall have effect as references either to each of the proposed services or to all of them considered together, as [^{F30}OFCOM] consider appropriate.
- (4) Nothing in this section applies in relation to the renewal of a multiplex licence.

Textual Amendments

F30 Words in s. 9 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 81](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

10 Award of multiplex licence subject to conditions.

- (1) [^{F31}OFCOM] may, when awarding a multiplex licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
 - (a) any duties which are or may be imposed on them, or on the licence holder, by or under [^{F32}this Act, the 1990 Act or Part 3 of the Communications Act 2003], and
 - (b) any information provided to them under section 7(4)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where [^{F31}OFCOM] determine that any condition imposed by them in relation to a multiplex licence in pursuance of subsection (1) has not been satisfied, section 8 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 8 shall not so have effect if [^{F31}OFCOM] decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.

Textual Amendments

F31 Words in s. 10 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 82\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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F32 Words in s. 10(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 82\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) Subject to subsection (2), subsection (3) applies where at any time after a multiplex licence has been granted to any person but before the licence has come into force—
 - (a) that person indicates to [F33OFCOM] that he does not intend to provide the service in question, or
 - (b) [F33OFCOM] for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force.
 - (2) Subsection (3) shall not apply in the case of any person by virtue of paragraph (b) of subsection (1) unless [F33OFCOM] have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
 - (3) Where this subsection applies—
 - (a) [F33OFCOM] shall serve on the person to whom the licence has been granted a notice revoking the licence as from the time the notice is served on him, and
 - (b) section 8 shall (subject to subsection (4)) have effect as if he had not made an application for the licence.
 - (4) Section 8 shall not have effect as mentioned in subsection (3) if [F33OFCOM] decide that it would be desirable to publish a fresh notice under section 7(1) in respect of the grant of the licence.
 - (5) Where [F33OFCOM] revoke a multiplex licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a specified financial penalty^{F34}...
- [F35(5A) The maximum amount which a person may be required to pay by way of a penalty under subsection (5) is the maximum penalty given by subsections (5B) and (5C).
- (5B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
 - (a) £500,000; and
 - (b) 7 per cent. of the amount which OFCOM estimate would have been the multiplex revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
 - (5C) In any other case, the maximum penalty is whichever is the greater of—
 - (a) £500,000; and
 - (b) 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.
 - (5D) Section 14 applies for estimating or determining multiplex revenue for the purposes of subsection (5B) or (5C) above.]

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- (7) Any financial penalty payable by any body by virtue of subsection (5) shall, in addition to being recoverable from that body as provided by section 38(4), be recoverable by [F33OFCOM] as a debt due to them from any person who controls that body.

Textual Amendments

- F33** Words in s. 11 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 83](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)
- F34** Words in s. 11(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 11\(1\)\(3\), Sch. 19\(1\) \(with Sch. 18\); S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)
- F35** S. 11(5A)-(5D) substituted for s. 11(6) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 11\(2\)\(3\) \(with Sch. 18\); S.I. 2003/3142, art. 3\(1\), Sch. 1 \(with art. 11\)](#)

Modifications etc. (not altering text)

- C6** S. 11 applied (with modifications)(20.11.1996) by [S.I. 1996/2760, art. 5\(1\)\(2\)\(4\)](#)

12 Conditions attached to multiplex licence.

- (1) A multiplex licence shall include such conditions as appear to [F36OFCOM] to be appropriate for securing—
- (a) that the licensed service is established by the licence holder in accordance with the timetable and other proposals indicated in the technical plan submitted under section 7(4)(b),
 - (b) the implementation of any proposals submitted by the licence holder under section 7(4)(c), (d), (e) or (f),
 - (c) that all digital programme services broadcast under the licence are provided by the holder of a licence under section 18 [F37, by the BBC][F38 or by an EEA broadcaster],
 - (d) that all digital additional services broadcast under the licence are provided by the holder of a licence under section 25 [F39, by the BBC][F40 or by an EEA broadcaster],
 - [F41](da) that the only digital sound programme services broadcast under the licence are services provided by the holder of a national digital sound programme licence (within the meaning of section 60) or by the BBC;
 - (e) that in the terms on which the licence holder contracts, or offers to contract, for the broadcasting of digital programme services [F42, digital sound programme services] or digital additional services, he does not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons,
 - (f) that the licence holder does not, in any agreement with a person providing a digital programme service [F43, a digital sound programme service] or digital additional services which entitles that person to use a specified amount of digital capacity on the frequency or frequencies to which the licence relates, restrict that person's freedom to make arrangements with some other person as to the use of any of that digital capacity (except to the extent that the restriction is reasonably required for the purpose of ensuring the technical quality of the broadcasts or for the purpose of securing compliance with any other condition of the licence),

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- (g) that the signals carrying the multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area for which the service is provided as is for the time being reasonably practicable, and
- [^{F44}(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).]
- [^{F45}(1A) The services falling within this subsection are—
- (a) qualifying services;
 - (b) digital programme services licensed under this Part or provided by the BBC;
 - (c) digital sound programme services provided by the BBC;
 - (d) programme-related services; and
 - (e) relevant technical services.]
- (2) Any conditions imposed in pursuance of subsection (1)(a) or (b) may be varied by [^{F36}OFCOM] with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).
- (3) Where the licence holder applies to [^{F36}OFCOM] for the variation of any condition imposed in pursuance of subsection (1)(b) and relating to the characteristics of any of the digital programme services [^{F46}or digital sound programme services] to be broadcast under the licence, [^{F36}OFCOM] shall vary the condition accordingly unless it appears to them that, if the application were granted, the capacity of the [^{F47}so much of what is broadcast under the licence as consists of digital programme services, or of such services together with digital sound programme services,] to appeal to a variety of tastes and interests would be unacceptably diminished.
- [^{F48}(3A) In subsection (1)(c) and (d) “EEA broadcaster” means a person who for the purposes of Council Directive [89/552/EEC](#) is under the jurisdiction of an EEA State other than the United Kingdom.]
- (4) In subsection [^{F49}(1A)] —
- (a) “qualifying service” does not include [^{F50}the digital public teletext service] ,
 - (b) “programme-related service” means any digital additional service consisting in the provision of services (apart from advertising) which—
 - (i) are ancillary to the programmes included in one or more television programme services (within the meaning of Part I of the 1990 Act) [^{F51}, or in one or more digital sound programme services provided by the BBC,] and are directly related to the contents of those programmes, or
 - (ii) relate to the promotion or listing of such programmes, and
 - (c) “relevant technical service” means any technical service which relates to one or more [^{F52}services falling within subsection (1A) which are comprised in the multiplex in question] .
- [^{F53}(4A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 90 per cent. as OFCOM—
- (a) consider appropriate; and
 - (b) specify in the condition.]

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- (5) The Secretary of State may by order amend subsection [^{F54}(4A)] by substituting for the percentage for the time being specified there a different percentage specified in the order.
- (6) No order under subsection (5) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

^{F55}(7)

Textual Amendments

- F36** Word in s. 12 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 84](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F37** Words in s. 12(1)(c) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F38** Words in s. 12(1)(c) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(2\)](#)
- F39** Words in s. 12(1)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(b\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F40** Words in s. 12(1)(d) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(3\)](#)
- F41** S. 12(1)(da) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(c\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F42** Words in s. 12(1)(e) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(d\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F43** Words in s. 12(1)(f) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(e\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F44** S. 12(1)(h) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(1\)\(f\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F45** S. 12(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F46** Words in s. 12(3) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(3\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F47** Words in s. 12(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(3\)\(b\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F48** S. 12(3A) inserted (30.12.1998) by [S.I. 1998/3196, reg. 2, Sch. para. 9\(4\)](#)
- F49** Words in s. 12(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F50** Words in s. 12(4)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(b\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F51** Words in s. 12(4)(b)(i) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(c\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F52** Words in s. 12(4)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(4\)\(d\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F53** S. 12(4A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F54** Word in s. 12(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 242\(6\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F55** S. 12(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\) Note 1](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

Modifications etc. (not altering text)

- C7** S. 12 applied (with modifications)(20.11.1996) by [S.I. 1996/2760, art. 5\(1\)\(3\)\(4\)](#)

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13 Additional payments to be made in respect of multiplex licences.

- (1) Where a multiplex licence is granted in pursuance of a notice under subsection (1) of section 7 which specified a percentage of multiplex revenue under paragraph (f) of that subsection, the licence shall include conditions requiring the licence holder to pay to [F56OFCOM] (in addition to any fees required to be so paid by virtue of section 4(1)(b)) in respect of each accounting period of his falling within the period for which the licence is in force, an amount representing such percentage of the multiplex revenue for that accounting period (determined under section 14) as was specified in the notice.
- (2) The Secretary of State may by order provide that, in relation to any notice under subsection (1) of section 7 published while the order is in force, no percentage shall be specified under paragraph (f) of that subsection.
- (3) Any order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A multiplex licence may include conditions—
 - (a) enabling [F56OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1), and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may in particular include conditions—
 - (a) authorising [F56OFCOM] to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
 - (b) providing for the adjustment of any overpayment or underpayment.
- (6) Where—
 - (a) the first complete accounting period of the licence holder falling within the period for which the licence is in force (“the licence period”) does not begin at the same time as that period, or
 - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,

any reference in subsection (1) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

Textual Amendments

F56 Words in s. 13 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 85](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

Modifications etc. (not altering text)

C8 S. 13(1) applied (with modifications)(20.11.1996) by [S.I. 1996/2760, art. 5\(1\)\(4\)\(5\)](#)

C9 S. 13(2)(3) excluded (20.11.1996) by [S.I. 1996/2760, art. 5\(6\)](#)

C10 S. 13(4)-(6) applied (*prosp.*) by [1990 c. 42, s. 26\(9A\)](#) (as inserted by [1996 c. 55, s. 82\(3\)](#) (with [s. 43\(1\)\(6\)](#))

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14 Multiplex revenue.

- (1) For the purposes of [F57 this Part] the multiplex revenue for each accounting period of [F58 the person who is the multiplex provider in relation to any television multiplex service or any general multiplex service] shall consist of—
- (a) all payments received or to be received by him or any person connected with him from a person other than a programme provider or an additional services provider—
 - (i) in consideration of the inclusion in that period, in any digital programme service or digital additional service broadcast by means of [F59 the relevant multiplex] , of advertisements or other programmes, or
 - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service or digital additional service,
 - (b) all payments received or to be received by him or any person connected with him in respect of the broadcasting [F60 by means of the multiplex service of any service which is a qualifying service or which (without being a qualifying service) is provided by the BBC] ,
 - (c) all payments received or to be received by any programme provider or any person connected with him from a person other than [F61 the multiplex provider] , an additional services provider or another programme provider—
 - (i) in consideration of the inclusion in that period, in any digital programme service provided by him for broadcasting by means of [F61 the relevant multiplex] , of advertisements or other programmes, or
 - (ii) in respect of charges made in that period for the reception of programmes included in any such digital programme service, and
 - (d) all payments received or to be received by any additional services provider or any person connected with him from a person other than [F61 the multiplex provider] , a programme provider or another additional services provider—
 - (i) in consideration of the inclusion in that period, in any digital additional service provided by him for broadcasting by means of [F61 the relevant multiplex] , of advertisements or other programmes, or
 - (ii) in respect of charges made in that period for the reception of programmes included in any such digital additional service.
- (2) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (1)(a)(i), any payments are made to [F62 the multiplex provider] or any connected person to meet any payments payable by [F62 the multiplex provider] by virtue of section 13(1), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (3) In the case of an advertisement included as mentioned in subsection (1)(a)(i), (c)(i) or (d)(i) under arrangements made between—
- (a) [F62 the multiplex provider] , a programme provider or an additional services provider or any person connected with any of them, and
 - (b) a person acting as an advertising agent,
- the amount of any receipt by [F62 the multiplex provider] , programme provider or additional services provider or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of

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commission shall, except in a case falling within subsection (4), be the amount of the payment by the advertiser after the deduction of the commission.

- (4) If the amount deducted by way of commission as mentioned in subsection (3) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.
- (5) If, in any accounting period of [^{F62}the multiplex provider], a programme provider or an additional services provider or a person connected with any of them derives, in relation to any programme to be included in the relevant service, any financial benefit (whether direct or indirect) from payments made by any person other than [^{F62}the multiplex provider], by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the relevant payments shall be taken to include the amount of the financial benefit so derived by [^{F62}the multiplex provider] or the connected person, as the case may be.
- (6) In subsection (5)—
- (a) “the relevant service” means—
- (i) in relation to a programme provider or a person connected with him, any digital programme service provided as mentioned in subsection (1)(c)(i), and
- (ii) in relation to an additional services provider or a person connected with him, any digital additional service provided as mentioned in subsection (1)(d)(i), and
- (b) “relevant payments” means—
- (i) in relation to a programme provider, the payments referred to in subsection (1)(c), and
- (ii) in relation to an additional services provider, the payments referred to in subsection (1)(d).
- (7) Where, in any accounting period of [^{F62}the multiplex provider] —
- (a) [^{F62}the multiplex provider] provides a digital programme service or digital additional service for broadcasting by means of the multiplex service,
- (b) [^{F62}the multiplex provider] is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(a) being made to [^{F62}the multiplex provider],
- (c) a programme provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(c) being made to the programme provider, or
- (d) an additional services provider is engaged in any activity which, if engaged in by another person, would result in payments falling within subsection (1)(d) being made to the additional services provider,

[^{F63}OFCOM] may, if they consider that the amount which would (apart from this subsection) be the multiplex revenue for that accounting period is less than it would have been if the digital programme service or digital additional service had been provided, or the activity engaged in, by another person at arm’s length, treat the multiplex revenue as increased by the amount of the difference.

- (8) Where, in any accounting period of [^{F62}the multiplex provider], [^{F62}the multiplex provider] or a programme provider or additional services provider receives payments falling within subsection (1)(a), (b), (c) or (d) from a person connected with him and it appears to [^{F63}OFCOM] that the amount which (apart from this subsection) would be the multiplex revenue for that accounting period is less than it would have

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been if the arrangements between him and the connected person were such as might be expected between parties at arm's length, [F63OFCOM] may treat the multiplex revenue as increased by the amount of the difference.

(9) In this section—

“additional services provider”, in relation to [F64a television multiplex service or a general multiplex service] , means any person who provides any digital additional service for broadcasting by means of [F65that multiplex service] ;

“[F66multiplex provider”— ”

in relation to a television multiplex service for which a person holds a licence under this Part, means the licence holder; and

in relation to a television multiplex service which is not licensed under this Part or a general multiplex service, means the person who provides that service;]

“programme provider”, in relation to [F64a television multiplex service or a general multiplex service] , means any person who provides a digital programme service for broadcasting by means of [F65that multiplex service] .

“[F67the relevant multiplex - ”

in relation to a multiplex provider falling within paragraph (a) of the definition of that expression, means the television multiplex service to which his licence relates; and

in relation to any other multiplex provider, means the television multiplex service or general multiplex service which is provided by him;

and this section and section 15 shall have effect as if references in this section to digital programme services included references to digital sound programme services and references to digital additional services included references to digital additional services within the meaning of Part 2.]

Textual Amendments

- F57** Words in s. 14(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F58** Words in s. 14(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F59** Words in s. 14(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F60** Words in s. 14(1)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F61** Words in s. 14(1)(c)(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(2\)\(e\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F62** Words in s. 14(2)-(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F63** Words in s. 14(2)-(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F64** Words in s. 14(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F65** Words in s. 14(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F66** Words in s. 14(9) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(4\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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F67 Words in s. 14(9) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 86\(4\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

15 Attribution of multiplex revenue to licence holder and others.

- (1) For the purposes of section [F68 17(2A) and (2B)] , the share of multiplex revenue attributable to [F69 the person who is the multiplex provider in relation to any television multiplex service] in respect of any accounting period of his shall be—
- (a) the aggregate of—
- (i) payments falling within paragraphs (a) or (b) of section 14(1), and
 - (ii) payments received or to be received by him from programme providers and additional services providers in respect of the provision [F70 in that period of television multiplex services,]
- less
- (b) the amount of any payments made or to be made to programme providers or additional service providers which would fall within paragraph (c) or (d) of section 14(1) but for the fact that they are received from [F71 the multiplex provider] .
- (2) For the purposes of [F72 sections 23(2A) to (5) and 27(2A) to (5)] , the share of multiplex revenue attributable to a programme provider or additional services provider in relation to [F73 a television multiplex service or a general multiplex service] in respect of any accounting period of [F74 the multiplex provider] shall be—
- (a) the aggregate of—
- (i) payments falling within paragraph (c) or (d) of section 14(1), and
 - (ii) payments received or to be received from [F74 the multiplex provider] which would fall within one of those paragraphs but for the fact that they are received from [F74 the multiplex provider],
- less
- (b) the amount of any payments made or to be made to [F74 the multiplex provider] in respect of the provision of multiplex services in that period.
- (3) In a case falling within subsection (7) or (8) of section 14, [F75 OFCOM] may treat the share of multiplex revenue attributable to any person for the accounting period of [F76 the multiplex provider] as increased by such amount as they consider appropriate to take account of the circumstances mentioned in that subsection.
- (4) In this section “additional services provider” [F77, ‘multiplex provider’] and “programme provider”, in relation to [F78 a television multiplex service or a general multiplex service] , have the same meaning as in section 14.

Textual Amendments

- F68** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 12\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F69** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 87\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F70** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 87\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F71** Words in s. 15(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 87\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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- F72** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 12\(2\)\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F73** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(3\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F74** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(3\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F75** Words in s. 15(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(4\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F76** Words in s. 15(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(4\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F77** Words in s. 15(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(5\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F78** Words in s. 15(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 87\(5\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

16 Duration and renewal of multiplex licences.

- (1) A multiplex licence shall (subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 17(6)) continue in force for a period of twelve years.
- (2) A multiplex licence granted within six years of the commencement of this section may be renewed on one occasion in accordance with this section for a period of twelve years beginning with the date on which it would otherwise expire.
- (3) An application for the renewal of a multiplex licence under subsection (2) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than ^{F79}the day falling three months before] the relevant date.
- (4) At any time before determining the application, ^{F80}[OFCCOM] may—
 - (a) require the applicant to furnish—
 - (i) a technical plan which supplements that submitted by the licence holder under section 7(4)(b), and
 - (ii) proposals which supplement any proposals submitted by the licence holder under section 7(4)(f), and
 - (b) notify the applicant of requirements which must be met by that supplementary technical plan or those supplementary proposals and relate to the matters referred to in section 7(4)(b)(i) and (ii) and (f).
- (5) The consent of the Secretary of State shall be required for any exercise by ^{F80}[OFCCOM] of their powers under subsection (4) and for any decision by ^{F80}[OFCCOM] not to exercise those powers; and in deciding whether to give his consent the Secretary of State shall have regard to any report made to him under subsection (1)(b) of section 33 and to any representations received by him on consultation under subsection (4) of that section.
- (6) Where any such application is made ^{F81}..., ^{F80}[OFCCOM] may postpone consideration of it by them for as long as they think appropriate having regard to subsection (10).
- (7) Where an application for the renewal of a multiplex licence has been duly made to ^{F80}[OFCCOM] they may refuse the application only if—
 - (a) it appears to them that the applicant has failed to comply with any of the conditions included in his licence,

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- (b) any supplementary technical plan or supplementary proposals submitted under subsection (4)(a) fail to meet requirements notified to the applicant under subsection (4)(b), or
 - (c) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied with the conditions to be included in the licence as renewed.
- (8) Subject to subsection (9), on the grant of any such application [F80]OFCOM] may with the consent of the Secretary of State, and shall if so required by him—
- (a) specify a percentage different from that specified under section 7(1)(f) as the percentage of multiplex revenue for each accounting period of his that will be payable by the applicant in pursuance of section 13(1) during the period for which the licence is to be renewed, or
 - (b) specify such a percentage where none was specified under section 7(1)(f);
- and [F80]OFCOM] may specify under paragraph (a) or (b) either of the things mentioned in section 7(2)(b).
- (9) Where an order under section 13(2) is in force on the relevant date, no percentage of multiplex revenue shall be payable as mentioned in subsection (8)(a) during the period for which the licence is to be renewed.
- (10) Where [F80]OFCOM] have granted a person’s application under this section, they shall formally renew his licence from the date on which it would otherwise expire; and they shall not so renew his licence unless they have notified him of any percentage specified by them under subsection (8) and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (11) Where a multiplex licence has been renewed under this section, the licence as renewed shall include such further conditions as appear to [F80]OFCOM] to be appropriate for securing the implementation of any supplementary technical plan and supplementary proposals submitted under subsection (4)(a).
- (12) In this section “the relevant date”, in relation to a multiplex licence, means the date which [F80]OFCOM] determine to be that by which they would need to publish a notice under section 7(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the service formerly provided under that licence.
- [F82](12A) A determination for the purposes of subsection (12)—
- (a) must be made at least one year before the date determined; and
 - (b) must be notified by OFCOM to the person who holds the licence in question.]
- (13) Nothing in this section prevents the holder of a multiplex licence from applying for a new licence on one or more occasions in pursuance of a notice under section 7(1).

Textual Amendments

- F79** Words in s. 16(3) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 88\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F80** Words in s. 16 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 88\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F81** Words in s. 16(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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F82 S. 16(12A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 88\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

Modifications etc. (not altering text)

C11 S. 16 applied (with modifications)(20.11.1996) by [S.I. 1996/2760](#), [art. 5\(1\)\(4\)\(7\)](#)

C12 S. 16(12A) restricted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 50\(1\)\(2\)\(d\)\(16\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

C13 S. 16(3) modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 18 para. 50\(3\)-\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

17 Enforcement of multiplex licences.

(1) If [^{F83}OFCOM] are satisfied that the holder of a multiplex licence has failed to comply with any condition of the licence or with any direction given by [^{F83}OFCOM] under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—

- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to [^{F83}OFCOM], or
- (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.

(2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed [^{F84}the maximum penalty given by subsection (2A).]

[^{F85}(2A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the share of multiplex revenue attributable to the licence holder for his last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).

(2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.

(2C) Section 15(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above.]

(4) [^{F83}OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(5) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [^{F83}OFCOM] may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.

(6) Section 42 of the 1990 Act (power to revoke Channel 3 or 5 licence) shall have effect in relation to a multiplex licence as it has effect in relation to a Channel 3 licence, but as if the reference in subsection (1)(a) of that section to Part I of the 1990 Act were a reference to this Part.

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Textual Amendments

- F83** Words in s. 17 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 89](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F84** Words in s. 17(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 13\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F85** S. 17(2A)-(2C) substituted for s. 17(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 13\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

Digital programme services

18 Licensing of digital programme services.

- (1) An application for a licence to provide digital programme services (in this Part referred to as a “digital programme licence”) shall—
 - (a) be made in such manner as [^{F86}OFCOM] may determine, and
 - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, [^{F86}OFCOM] may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to [^{F86}OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital programme licence is made to [^{F86}OFCOM] in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).

^{F87}(5)

^{F87}(6)

Textual Amendments

- F86** Words in s. 18(1)-(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 90\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F87** S. 18(5)(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 90\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

19 Duration and conditions of digital programme licence.

- (1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 23(8), a digital programme licence shall continue in force until it is surrendered by its holder.

^{F88}(2)

- (3) A digital programme licence shall also include such conditions as appear to [^{F89}OFCOM] to be appropriate for requiring the holder of the licence—
 - (a) on entering into any agreement with [^{F90}the provider of a television multiplex service or general multiplex service] for the provision of a digital programme

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service to be broadcast [^{F91}by means of that provider’s service] , to notify [^{F89}OFCOM] —

- (i) of [^{F92}the identity of the service by means of which it will be broadcast] ,
 - (ii) of the characteristics of the digital programme service to which the agreement relates,
 - (iii) of the period during which it will be provided, and
 - (iv) where under the agreement the holder of the digital programme licence will be entitled to the use of a specified amount of digital capacity, of that amount,
- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii), (iii) or (iv), to notify [^{F89}OFCOM] of the variation so far as relating to those matters, and
- (c) where he is providing a digital programme service to [^{F93}the provider of a television multiplex service or general multiplex service] in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify [^{F89}OFCOM] of that fact.

- ^{F94}(4)
- ^{F94}(5)
- ^{F94}(6)
- ^{F94}(7)
- ^{F94}(8)
- ^{F94}(9)
- ^{F94}(10)

Textual Amendments

- F88** S. 19(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 15 para. 91(3), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F89** Words in s. 19(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F90** Words in s. 19(3)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F91** Words in s. 19(3)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(c\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F92** Words in s. 19(3)(a)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(d\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F93** Words in s. 19(3)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 91\(2\)\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F94** S. 19(4)-(10) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 15 para. 91(3), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

^{F95}**20 Code relating to provision for deaf and visually impaired.**

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Status: Point in time view as at 29/12/2003.

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Textual Amendments

F95 Ss. 20-22 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

^{F95}21 Powers of Secretary of State in relation to code under section 20.

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Textual Amendments

F95 Ss. 20-22 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

^{F95}22 Compliance with code under section 20.

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Textual Amendments

F95 Ss. 20-22 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

23 Enforcement of digital programme licences.

(1) If [^{F96}OFCOM] are satisfied that the holder of a digital programme licence has failed to comply with any condition of the licence or with any direction given by [^{F96}OFCOM] under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—

- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to [^{F96}OFCOM], or
- (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.

(2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed [^{F97}the maximum penalty given by subsection (2A).]

[^{F98}(2A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.]

(4) In [^{F99}subsection (2A)] “relevant accounting period”, in relation to a [^{F100}television multiplex service or general multiplex service, means the last accounting period of the multiplex provider] .

(5) Where, in the case of any [^{F101}television multiplex service or general multiplex service, the first accounting period of the multiplex provider] throughout which the holder of the digital programme licence provides a digital programme service for broadcasting

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by means of the multiplex service (“the first period”) has ^{F102}not ended when the penalty is imposed, then for the purposes of this section] the share of multiplex revenue attributable to the holder of the digital programme licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which ^{F96}OFCOM] estimate to be the share of multiplex revenue attributable to him for the first period.

^{F103}(5A) In subsections (4) and (5) “multiplex provider” has the same meaning as in section 14.]

^{F104}(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.]

- (6) ^{F96}OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), ^{F96}OFCOM] may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (8) Subject to subsection (9), section 40(1) to (4) (power to direct licensee to broadcast correction or ^{F105}statement of findings] or not to repeat programme) and section 42 (power to revoke Channel 3 or 5 licence) of the 1990 Act shall apply in relation to a digital programme licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital programme licence, section 42 of the 1990 Act shall have effect—
 - (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
 - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by ^{F96}OFCOM] of their powers under subsection (1) in respect of any failure to comply with any condition of a digital programme licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

Textual Amendments

- F96** Words in s. 23 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F97** Words in s. 23(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(1\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F98** S. 23(2A) substituted for s. 23(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(2\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F99** Words in s. 23(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(3\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F100** Words in s. 23(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F101** Words in s. 23(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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- F102** Words in s. 23(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(4\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F103** S. 23(5A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F104** S. 23(5B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(5\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F105** Words in s. 23(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

Digital additional services provided on television broadcasting frequencies

24 Digital additional services.

- (1) In this Part “digital additional service” means any service which—
- [^{F106}(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;
 - (b) is so provided with a view either—
 - (i) to the broadcasting being by means of a television multiplex service or by means of a general multiplex service; or
 - (ii) to the members of the public in question being or including members of the public in an EEA State other than the United Kingdom, or in an area of such a State;
 - and
 - (c) is not a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital programme service, a digital sound programme service, an ancillary service or a technical service.]
- (2) In this Part “ancillary service” means any service which is provided by the holder of a digital programme licence or by an [^{F107}a relevant public service broadcaster] and consists in the provision of—
- [^{F108}(a) assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by him;
 - (b) a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided; or
 - (c) any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents.]
- (3) In this Part “technical service” means a service which—
- (a) is provided for technical purposes connected with the encryption or decryption of one or more digital programme services [^{F109}, digital sound programme services] or digital additional services, and
 - (b) is of a description specified in an order made by the Secretary of State.
- [^{F110}(3A) In this section—

“assistance for disabled people” has the same meaning as in Part 3 of the Communications Act 2003;

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“available for reception by members of the public” shall be construed in accordance with section 361 of that Act;

“public television service of the Welsh Authority” means—

- (a) S4C Digital; or
- (b) any television programme service the provision of which by the Authority is authorised by or under section 205 of that Act and which is provided in digital form;

“relevant public service broadcaster” means any of the following—

- (a) a person licensed under Part 1 of the 1990 Act to provide a Channel 3 service;
- (b) the Channel 4 Corporation;
- (c) a person licensed under Part 1 of the 1990 Act to provide Channel 5;
- (d) the BBC;
- (e) the Welsh Authority;
- (f) the public teletext provider.]

- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F106** S. 24(1)(a)-(c) substituted for s. 24(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 93\(2\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F107** Words in s. 24(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 93\(3\)\(a\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F108** S. 24(2)(a)-(c) substituted for s. 24(2)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 93\(3\)\(b\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F109** Words in s. 24(3)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 93\(4\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F110** S. 24(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 93\(5\)](#) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

25 Licensing of digital additional services.

- (1) An application for a licence to provide digital additional services (in this Part referred to as a “digital additional services licence”) shall—
 - (a) be made in such manner as [F111]OFCOM] may determine, and
 - (b) be accompanied by such fee (if any) as they may determine.
- (2) At any time after receiving such an application and before determining it, [F111]OFCOM] may require the applicant to furnish such additional information as they may consider necessary for the purpose of considering the application.
- (3) Any information to be furnished to [F111]OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (4) Where an application for a digital additional services licence is made to [F111]OFCOM] in accordance with the provisions of this section, they shall grant the licence unless precluded from doing so by section 3(3)(a) or 5(1).

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[^{F112}(4A) A digital additional services licence is not required for a service that is or is comprised in a qualifying service.]

^{F113}(5)

^{F114}(6)

Textual Amendments

F111 Words in s. 25(1)-(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F112 S. 25(4A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F113 S. 25(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F114 S. 25(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 94\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

26 Duration and conditions of digital additional services licence.

- (1) Subject to the provisions of this Part and to section 42 of the 1990 Act as applied by section 27(8), a digital additional services licence shall continue in force until it is surrendered by its holder.
- (2) A digital additional services licence shall include such conditions as appear to [^{F115}OFCOM] to be appropriate for requiring the holder of the licence—
 - (a) on entering into any agreement with [^{F116}the provider of a television multiplex service or general multiplex service] for the broadcasting of digital additional services [^{F117}by means of that provider’s service] , to notify [^{F115}OFCOM] —
 - (i) of [^{F118}the identity of the service by means of which it will be broadcast] ,
 - (ii) of the period during which the services will be provided,
 - (iii) where under the agreement the holder of the digital additional services licence will be entitled to the use of a specified amount of digital capacity, of that amount,
 - (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify [^{F115}OFCOM] of the variation so far as relating to those matters, and
 - (c) where he is providing digital additional services to [^{F119}the provider of a television multiplex service or general multiplex service] in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify [^{F115}OFCOM] of that fact.

Textual Amendments

F115 Words in s. 26(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F116 Words in s. 26(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F117 Words in s. 26(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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F118 Words in s. 26(2)(a)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

F119 Words in s. 26(2)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 95\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

27 Enforcement of digital additional services licences.

- (1) If [^{F120}OFCOM] are satisfied that the holder of a digital additional services licence has failed to comply with any condition of the licence or with any direction given by [^{F120}OFCOM] under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to [^{F120}OFCOM] , or
 - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.

- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed [^{F121}the maximum penalty given by subsection (2A).]

[^{F122}(2A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.]

- (4) In [^{F123}subsection (2A)] “relevant accounting period”, in relation to a [^{F124}television multiplex service or general multiplex service, means the last accounting period of the multiplex provider] .

- (5) Where, in the case of any [^{F125}television multiplex service or general multiplex service, the first accounting period of the multiplex provider] throughout which the holder of the digital additional services licence provides a digital additional service for broadcasting by means of the multiplex service (“the first period”) has [^{F126}not ended when the penalty is imposed, then for the purposes of this section] the share of multiplex revenue attributable to the holder of the digital additional services licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which [^{F120}OFCOM] estimate to be the share of multiplex revenue attributable to him for the first period.

[^{F127}(5A) In subsections (4) and (5) “multiplex provider” has the same meaning as in section 14.]

[^{F128}(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.]

- (6) [^{F120}OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

- (7) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), [^{F120}OFCOM] may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to

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the operation of the licensed service has been such as to justify the revocation of that notice.

- (8) Subject to subsection (9), sections 40(1) to (4) and section 42 of the 1990 Act shall apply in relation to a digital additional services licence as they apply in relation to a Channel 3 licence.
- (9) In its application in relation to a digital additional services licence, section 42 of the 1990 Act shall have effect—
- (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
 - (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).
- (10) It is hereby declared that any exercise by [^{F120}OFCOM] of their powers under subsection (1) in respect of any failure to comply with any condition of a digital additional services licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

Textual Amendments

- F120** Words in s. 27 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F121** Words in s. 27(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(1\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F122** S. 27(2A) substituted for s. 27(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(2\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F123** Words in s. 27(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(3\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F124** Words in s. 27(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F125** Words in s. 27(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F126** Words in s. 27(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(4\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F127** S. 27(5A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 96\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F128** S. 27(5B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 15\(5\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

Digital broadcasting of services provided by independent analogue broadcasters

^{F129}28 **Provision for broadcasting of services provided by independent analogue broadcasters.**

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Textual Amendments

- F129** S. 28 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18 para. 47](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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29 The S4C digital service.

- (1) If the Welsh Authority provide S4C Digital, it shall be their duty—
 - (a) to provide it as a public service for disseminating information, education and entertainment,
 - (b) to ensure that all the programmes in Welsh which are broadcast on S4C are broadcast on S4C Digital at the same time, and
 - (c) to ensure that the programmes which are broadcast on S4C Digital but not on S4C maintain—
 - (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
 - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.
- (2) Sections 57(4), 58(5), ^{F130} ... 60 and 64 of the 1990 Act shall apply in relation to S4C Digital as they apply in relation to S4C.
- (3) No payment shall be required by the BBC in respect of the broadcasting pursuant to subsection (1)(b) of programmes provided by them under section 58(1) of the 1990 Act.
- (4) In this section “programme” does not include an advertisement.

Textual Amendments

F130 Word in s. 29(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

^{F131}30 The qualifying teletext service.

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Textual Amendments

F131 S. 30 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

^{F132}31 Advertisements included in qualifying services.

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Textual Amendments

F132 S. 31 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

Status: Point in time view as at 29/12/2003.

Changes to legislation: Broadcasting Act 1996, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Miscellaneous and supplemental

32 Digital broadcasting of Gaelic programmes.

- (1) The Secretary of State may by order provide for ^{F133}[OFCOM to include in no more than one relevant multiplex licence] such conditions relating to the broadcasting of programmes in Gaelic for reception wholly or mainly in Scotland as may be specified in, or determined by them under, the order.
- (2) The Secretary of State may by order require the holder of a multiplex licence (“the holder”), in complying with any such conditions, to broadcast programmes in Gaelic supplied by each of the persons mentioned in subsection (4) (“the suppliers”) amounting to such minimum number of hours (if any) of transmission time per year as may be specified in the order in relation to that supplier.
- (3) For the purpose of enabling the holder to comply with any such conditions and any obligation imposed by virtue of subsection (2), it shall be the duty of each supplier to provide the holder, free of charge, with such programmes in Gaelic which have been broadcast by the supplier as the holder may request.
- (4) The suppliers are—
 - (a) the BBC,
 - (b) the Channel Four Television Corporation,
 - (c) any holder of a Channel 3 licence to provide a regional Channel 3 service (within the meaning of Part I of the 1990 Act) for reception wholly in Scotland, and
 - (d) such other persons providing television broadcasting services as may be specified by order by the Secretary of State.
- (5) Subsection (3) shall not apply in relation to any programme first broadcast by the supplier concerned—
 - (a) before 1st January 1993, or
 - (b) in the period beginning on 1st January 1993 and ending on 31st March 1997, if the supplier has no right to broadcast it again or has such a right but is not entitled to transfer it to the holder.
- (6) The holder may broadcast any programme supplied by virtue of subsection (3) on one occasion only.
- (7) The holder shall consult ^{F134}[Seirbheis nam Meadhanan Gàidhlig] and the suppliers about—
 - (a) the quantity of programmes likely to be requested by the holder from each supplier by virtue of subsection (3), and
 - (b) the schedules proposed for the broadcast by the holder of programmes supplied by virtue of that subsection,
 and shall have regard to any comments made as a result of such consultation.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- ^{F135}(9) In this section—

“Gaelic” means the Gaelic language as spoken in Scotland;

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“relevant multiplex licence” means a multiplex licence in respect of which the Secretary of State has made an order under section 243(3) of the Communications Act 2003;

“television broadcasting service” has the same meaning as in Part 3 of the Communications Act 2003.]

Textual Amendments

F133 Words in s. 32(1) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 97(2)** (with **Sch. 18**); **S.I. 2003/3142, art. 3(1), Sch. 1** (with art. 11)

F134 Words in s. 32(7) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 97(3)** (with **Sch. 18**); **S.I. 2003/3142, art. 3(1), Sch. 1** (with art. 11)

F135 S. 32(9) substituted (29.12.2003) by **Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 97(4)** (with **Sch. 18**); **S.I. 2003/3142, art. 3(1), Sch. 1** (with art. 11)

33 Review of digital television broadcasting.

- (1) For the purpose of considering for how long it would be appropriate for television broadcasting services to continue to be provided in analogue form, the Secretary of State—
 - (a) shall keep under review the extent of—
 - (i) the provision in the United Kingdom of multiplex services,
 - (ii) the availability in the United Kingdom in digital form of the ^{F136}following services, namely, Channel 3 services, Channel 4, Channel 5, the public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003), the digital public teletext service] , and the television broadcasting services of the BBC, and
 - (iii) the ownership or possession in the United Kingdom of equipment capable of receiving the services referred to in sub-paragraph (ii) when broadcast or transmitted in digital form,and the likely future extent of such provision, such availability and such ownership or possession, and
 - (b) shall, on or before the fourth anniversary of the day on which the first multiplex licence is granted under section 8, and at such time or times thereafter as he thinks fit, require ^{F137}[OFCOM] and the BBC to report to him on the matters referred to in paragraph (a).
- (2) If ^{F137}[OFCOM] or the BBC are required to submit a report under subsection (1)(b), they shall submit the report within twelve months of the date of the requirement.
- (3) Before making any report under subsection (1)(b), ^{F137}[OFCOM] shall consult—
 - (a) the holders of all multiplex licences,
 - (b) the holders of digital programme licences who are providing digital programme services which are being broadcast,
 - (c) such other persons providing services licensed by ^{F137}[OFCOM] under this Part or Part I ^{F138}... of the 1990 Act as ^{F137}[OFCOM] think fit, and
 - (d) the Welsh Authority;

Status: Point in time view as at 29/12/2003.

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and [F137OFCOM] shall include in their report a summary of representations made to them by the persons consulted.

- (4) For the purpose mentioned in subsection (1), the Secretary of State shall, on requiring reports under subsection (1)(b), consult—
- (a) such persons appearing to him to represent viewers as he thinks fit, and
 - (b) such other persons as he thinks fit,
- in connection with the matters referred to in subsection (1)(a) and also, if the Secretary of State thinks fit, as to the likely effects on viewers of any television broadcasting service ceasing to be broadcast in analogue form.
- (5) In this section “television broadcasting service” has the same meaning as in Part I of the 1990 Act.

Textual Amendments

F136 Words in s. 33(1)(a)(ii) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 98\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

F137 Words in s. 33 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 98\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

F138 Words in s. 33(3)(c) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\) Note 1](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

Modifications etc. (not altering text)

C14 S. 33: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 1 para. 11](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

^{F139}34 Promotion of equal opportunities and fair treatment.

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Textual Amendments

F139 S. 34 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\) Note 1](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

35 Enforcement of licences held by BBC companies.

Where [F140OFCOM] —

- (a) give a direction to a BBC company under section 40(1) of the 1990 Act as applied by section 23(8) or 27(8),
- (b) serve a notice on a BBC company under any provision of section 17, 23 or 27, or
- (c) receive any representations from a BBC company under section 17(4), 23(6) or 27(6) or under section 42 of the 1990 Act as so applied,

[F140OFCOM] shall send a copy of the direction, notice or representations to the Secretary of State.

Status: Point in time view as at 29/12/2003.

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Textual Amendments

F140 Word in s. 35 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 99](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

36 Power to vary amount of financial penalties.

(1) The Secretary of State may by order amend any of the provisions specified in subsection (2) by substituting a different sum for the sum for the time being specified there.

[^{F141}(2) The provisions referred to in subsection (1) are—

- (a) section 11(5B)(a) and (5C)(a);
- (b) section 17(2A)(a);
- (c) section 23(2A)(a); and
- (d) section 27(2A)(a).

(3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.]

Textual Amendments

F141 S. 36(2)(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 16](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

37 Computation of multiplex revenue.

Part I of Schedule 1 (which contains provisions relating to the computation of multiplex revenue for the purposes of this Part) shall have effect.

^{F142}**38 Certain receipts of Commission to be paid into Consolidated Fund.**

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Textual Amendments

F142 S. 38 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

39 Interpretation of Part I.

(1) In this Part—

“ancillary service” has the meaning given by section 24(2);

“a Channel 3 licence” has the same meaning as in Part I of the 1990 Act and “a Channel 3 service” means a regional or national Channel 3 service (within the meaning of that Part);

“Channel 4”, “Channel 5” and “a Channel 5 licence” have the same meaning as in Part I of the 1990 Act;

^{F143}
...

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“digital additional service” has the meaning given by section 24(1), and “digital additional services licence” means a licence to provide such services;

“digital programme service” has the meaning given by section 1(4), and “digital programme licence” means a licence to provide such services;

[^{F144}“digital public teletext service” has the same meaning as in Part 3 of the Communications Act 2003;

“digital sound programme service” has the same meaning as in Part 2 of this Act;

“general multiplex service” has the same meaning as in that Part;]

“independent analogue broadcaster” has the meaning given by section 2(1);

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“multiplex service” has the meaning given by section 1(1), and “multiplex licence” means a licence to provide such a service;

[^{F145}“public teletext provider” means the person for the time being licensed under Part 1 of the 1990 Act to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);]

“qualifying service” has the meaning given by section 2(2);

^{F143}
...

[^{F146}“S4C” and “S4C Digital” each has the same meaning as in Part 3 of the Communications Act 2003;]

“technical service” has the meaning given by section 24(3).

[^{F147}“television multiplex service” has the meaning given by section 241 of the Communications Act 2003.]

- (2) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

Textual Amendments

- F143** Words in s. 39(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F144** Words in s. 39(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 100\(a\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F145** Words in s. 39(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 100\(b\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F146** Words in s. 39(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 100\(c\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F147** Words in s. 39(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 100\(d\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

Status:

Point in time view as at 29/12/2003.

Changes to legislation:

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