



# Broadcasting Act 1996

## 1996 CHAPTER 55

### PART I

#### DIGITAL TERRESTRIAL TELEVISION BROADCASTING

##### *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 the Commission 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, the Commission 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 the Commission 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 the Commission 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).
- (5) Subject to subsection (6), sections 6 to 12 of the 1990 Act (general provisions relating to services licensed under Part I of that Act) shall apply in relation to a digital programme service licensed under this Part as they apply in relation to a service licensed under that Part of that Act.
- (6) In its application in relation to a digital programme service—
  - (a) section 6 of the 1990 Act shall have effect with the omission of subsection (8), and

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- (b) section 12(1)(b) of that Act shall have effect as if the reference to the Commission's functions under Chapter II of Part I of that Act included a reference to their functions under this Part.

## **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.
- (2) A digital programme licence shall include such conditions as the Commission consider necessary or appropriate to secure in relation to each service provided under the licence—
- (a) that a proper proportion of the matter included in the programmes provided by the service is of European origin, and
  - (b) that in each year not less than 10 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the service is allocated to the broadcasting of a range and diversity of independent productions.
- (3) A digital programme licence shall also include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence—
- (a) on entering into any agreement with the holder of a multiplex licence for the provision of a digital programme service to be broadcast by means of a multiplex service, to notify the Commission—
    - (i) of the identity of the multiplex service,
    - (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 the Commission of the variation so far as relating to those matters, and
  - (c) where he is providing a digital programme service to the holder of a multiplex licence in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify the Commission of that fact.
- (4) A digital programme licence shall also include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in subsection (3)(a), to submit to the Commission proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his service, together with his proposals for encouraging the training or retraining of persons employed or to be employed by persons providing programmes for inclusion in that service.
- (5) Where the holder of a digital programme licence has submitted proposals to the Commission in accordance with a condition included in the licence by virtue of subsection (4) or has failed to comply with such a condition, the Commission may, after consulting him, vary the licence so as to include in the licence such further

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conditions as they consider appropriate in relation to the matters referred to in that subsection.

- (6) In framing any condition in pursuance of subsection (2)(a), the Commission shall have regard to such of the international obligations of United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (7) In subsection (2)(b)—
  - (a) “independent productions” and “qualifying programmes” have the same meaning as in section 16(2)(h) of the 1990 Act, and
  - (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (8) The Secretary of State may by order amend subsection (2)(b) by substituting a different percentage for the percentage for the time being specified there.
- (9) Before making an order under subsection (8) the Secretary of State shall consult the Commission; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section “programme” does not include an advertisement.

## **20 Code relating to provision for deaf and visually impaired.**

- (1) The Commission shall draw up, and from time to time review, a code giving guidance as to—
  - (a) the extent to which digital programme services and qualifying services should promote the understanding and enjoyment by—
    - (i) persons who are deaf or hard of hearing, and
    - (ii) persons who are blind or partially-sighted,of the programmes to be included in such services, and
  - (b) the means by which such understanding and enjoyment should be promoted.
- (2) In this section “assistance” means assistance of any of the following three kinds, namely—
  - (a) subtitling for the deaf,
  - (b) audio-description for the blind, and
  - (c) presentation in, or translation into, sign language.
- (3) The code must require that, as from the tenth anniversary of the date of the commencement of the provision of any digital programme service, in each week—
  - (a) at least 50 per cent. of so much of the service as consists of programmes which are not excluded programmes in relation to subtitling for the deaf is to be accompanied by such subtitling, and
  - (b) at least 10 per cent. of so much of the service as consists of programmes which are not excluded programmes in relation to audio-description for the blind is to be accompanied by such audio-description.
- (4) The code must specify—
  - (a) in relation to subtitling for the deaf, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirement in paragraph (a) of subsection (3) to apply, and

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- (b) in relation to audio-description for the blind, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirement in paragraph (b) of that subsection to apply.
- (5) If an order under section 21(1)(b) is in force, the code must also specify, in relation to presentation in, or translation into, sign language, those classes of programmes in relation to which the Commission consider that it would be inappropriate for the requirements specified in the order to apply.
- (6) In determining under subsection (4) or (5) whether it is appropriate for a particular requirement to apply to any class of programmes, the Commission shall have regard, in particular, to the benefit which the assistance would be likely to confer on the persons for whom it is intended and to the technical difficulty of providing it.
- (7) In this section “excluded programme”, in relation to assistance of a particular kind, means a programme falling within a class specified under subsection (4) or (5) in relation to assistance of that kind.
- (8) Without prejudice to the generality of subsection (1), the code may—
- (a) require persons providing digital programme services, at any time or times before the anniversary referred to in subsection (3), to meet specified targets in relation to subtitling for the deaf or audio-description for the blind,
  - (b) require a specified percentage of so much of any digital programme service as consists of programmes which are not excluded programmes in relation to presentation in, or translation into, sign language, to be so presented or translated, and
  - (c) require, in relation to assistance of any kind, a specified percentage of so much of any digital programme service as consists of excluded programmes falling within a specified class to be accompanied by assistance of that kind.
- (9) In subsection (8) “specified” means specified in, or determined by the Commission under, the code.
- (10) Subsections (3) and (8), so far as relating to audio-description for the blind or presentation in, or translation into, sign language, shall have effect as if any reference to a digital programme service included a reference to a qualifying service.
- (11) The Commission may determine that, for the purposes of any provision included in the code in pursuance of subsection (3), a digital programme service provided by any person is to be treated as a continuation of a digital programme service previously provided by him.
- (12) Before drawing up the code or reviewing it in pursuance of this section the Commission shall consult such bodies or persons appearing to them to represent the interests of the persons referred to in subsection (1)(a) as the Commission think fit.
- (13) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate; and in determining the manner of publication, the Commission shall have regard to the need to make the code or revision accessible to persons who are blind or partially sighted and persons who are deaf or hard of hearing.
- (14) In this section—
- “programme” does not include an advertisement;
  - “qualifying service” does not include the qualifying teletext service.

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## **21 Powers of Secretary of State in relation to code under section 20.**

- (1) The Secretary of State may by order—
  - (a) amend subsection (3) of section 20 by substituting for any percentage specified there a percentage specified in the order, and
  - (b) require the Commission to include in the code maintained under that section the requirement that in each week, at least a percentage specified in the order of so much of any digital programme service or qualifying service as consists of programmes which are not excluded programmes for the purposes of that section in relation to presentation in, or translation into, sign language is to be so presented or translated.
- (2) In subsection (1) “qualifying service” does not include the qualifying teletext service.
- (3) Before making an order under subsection (1), the Secretary of State shall consult the Commission.
- (4) No order under subsection (1) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

## **22 Compliance with code under section 20.**

- (1) The Commission shall do all that they can to secure that the provisions of the code maintained by them under section 20 are observed in the provision of digital programme services and qualifying services.
- (2) Without prejudice to the generality of subsection (1), a digital programme licence shall include such conditions as appear to the Commission to be appropriate for requiring the holder of the licence, on entering into any such agreement as is mentioned in section 19(3)(a), to submit to the Commission proposals for ensuring that the code is complied with in relation to the provision of the digital programme service.
- (3) Where the holder of a digital programme licence has submitted proposals to the Commission in accordance with a condition included in the licence by virtue of subsection (2) or has failed to comply with such a condition, the Commission shall, after consulting him, vary the licence so as to include in the licence such further conditions as they consider appropriate for the purpose of securing compliance with the code in the provision of the digital programme service in question.

## **23 Enforcement of digital programme licences.**

- (1) If the Commission 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 the Commission 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 the Commission, 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 whichever is the greater of—
  - (a) £50,000, or
  - (b) the amount determined under subsection (3).

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- (3) The amount referred to in subsection (2)(b) is—
- (a) in a case where a penalty under this section has not previously been imposed on the holder of the digital programme licence during any period for which his licence has been in force, 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to multiplex services in respect of relevant accounting periods (as determined in accordance with section 15), and
  - (b) in any other case, 5 per cent. of the aggregate amount of those shares of multiplex revenue (as so determined).
- (4) In subsection (3)(a) “relevant accounting period”, in relation to a multiplex service, means the last accounting period of the holder of the multiplex licence.
- (5) Where, in the case of any multiplex service, the first accounting period of the holder of the multiplex licence throughout which the holder of the digital programme licence provides a digital programme service for broadcasting by means of the multiplex service (“the first period”) has not yet ended, then for the purposes of subsection (3) 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 the Commission estimate to be the share of multiplex revenue attributable to him for the first period.
- (6) The Commission 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), the Commission 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 apology 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 the Commission 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.

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