



Communications Act 2003

2003 CHAPTER 21

PART 3

TELEVISION AND RADIO SERVICES

^{F1F1}CHAPTER 2

REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES

Television licensable content services

232 Meaning of “television licensable content service”

- (1) In this Part “television licensable content service” means (subject to section 233) any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or [^{F1}more] of the following means—
 - (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; ^{F2}...
 - [^{F3}(aa) the broadcasting of the service (whether by that person or by another) by means of a radio multiplex service; or]
 - (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.
- (2) A service falls within this subsection if it—
 - (a) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public; and
 - (b) consists of [^{F4} or has as its principal purpose the provision of] television programmes or electronic programme guides, or both.
- (3) Where—

Status: Point in time view as at 16/04/2010.

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- (a) a service consisting of television programmes, an electronic programme guide or both (“the main service”) is provided by a person as a service to be made available for reception by members of the public, and
 - (b) that person provides the main service with other services or facilities that are ancillary to, or otherwise relate to, the main service and are also provided so as to be so available or in order to make a service so available,
- subsection (1) has effect as if the main service and such of the other services or facilities as are relevant ancillary services and are not two-way services constituted a single service falling within subsection (2).
- (4) Where a person providing the main service provides it with a facility giving access to another service, the other service shall also be taken for the purposes of this section as provided by that person with the main service only if what is comprised in the other service is something over which that person has general control.
- (5) A service is a two-way service for the purposes of this section if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both—
- (a) for the transmission of visual images or sounds (or both) by the person providing the service to users of the service; and
 - (b) for the transmission of visual images or sounds (or both) by those users for reception by the person providing the service or by other users of the service.
- (6) In this section—
- “electronic programme guide” means a service which consists of—
- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;
- “relevant ancillary service”, in relation to the main service, means a service or facility provided or made available by the provider of the main service that consists of or gives access to—
- (a) assistance for disabled people in relation to some or all of the programmes included in the main service;
 - (b) a service (apart from advertising) which is not an electronic programme guide but relates to the promotion or listing of programmes so included; or
 - (c) any other service (apart from advertising) which is ancillary to one or more programmes so included and relates directly to their contents.

Textual Amendments

- F1** Word in s. 232(1) substituted (25.7.2006) by [Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), **2(1)(a)**
- F2** Word in s. 232(1)(a) omitted (25.7.2006) by virtue of [Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), **2(1)(b)**
- F3** S. 232(1)(aa) inserted (25.7.2006) by [Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), **2(1)(c)**

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F4 Words in s. 232(2)(b) inserted (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **6(1)**

Commencement Information

II S. 232 in force at 29.12.2003 by [S.I. 2003/3142](#), art. 3(1), **Sch. 1** (with art. 11)

233 Services that are not television licensable content services

- (1) A service is not a television licensable content service to the extent that it is provided with a view to its being broadcast by means of a [^{F5}television multiplex service or a general multiplex service] .
- (2) A service is not a television licensable content service to the extent that it consists of a service the provision of which is authorised by—
 - (a) a licence to provide a television broadcasting service;
 - (b) the licence to provide the public teletext service; or
 - (c) a licence to provide additional television services.
- ^{F6}(3)
- (4) A service is not a television licensable content service if it is a two-way service (within the meaning of section 232).
- (5) A service is not a television licensable content service if—
 - (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
 - (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (6) For the purposes of subsection (5)—
 - (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
 - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (7) A service is not a television licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being—
 - (a) persons who have a business interest in the programmes included in the service; or
 - (b) persons who are to receive the programmes for the purpose only of showing them to persons falling within sub-paragraph (a) or to persons all of whom are on the business premises of the person receiving them.
- (8) For the purposes of subsection (7) a person has a business interest in programmes if he has an interest in receiving or watching them—
 - (a) for the purposes of a business carried on by him; or
 - (b) for the purposes of his employment.
- (9) In this section—

“business premises”, in relation to a person, means premises at or from which any business of that person is carried on;

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...

“premises” includes a vehicle;

“vehicle” includes a vessel, aircraft or hovercraft.

- (10) References in this section, in relation to a person, to a business include references to—
- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
 - (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

Textual Amendments

- F5** Words in s. 233(1) substituted (25.7.2006) by [Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), **2(2)(a)**
- F6** S. 233(3) omitted (19.12.2009) by virtue of [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **6(2)**
- F7** Words in s. 233(9) omitted (25.7.2006) by virtue of [Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), **2(2)(b)**

Commencement Information

- I2** S. 233 in force at 29.12.2003 by [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

234 Modification of ss. 232 and 233

- (1) The Secretary of State may by order modify any of the provisions of section 232 or 233 if it appears to him appropriate to do so having regard to any one or more of the following—
- (a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes;
 - (b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;
 - (c) the practicability of applying different levels of regulation in relation to different services;
 - (d) the financial impact for providers of particular services of any modification of the provisions of that section; and
 - (e) technological developments that have occurred or are likely to occur.
- (2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a television licensable content service for the purposes of the provisions of this Act that are so specified.
- (3) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

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Commencement Information

I3 S. 234 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

235 Licensing of television licensable content services

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of a television licensable content service is a licence granted under Part 1 of that Act on an application complying with this section.
- (2) An application for a licence to provide a television licensable content service—
 - (a) must be made in such manner,
 - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
 - (c) must be accompanied by such fee (if any),as OFCOM may determine.
- (3) Where an application is made to OFCOM in accordance with subsection (2) for a licence to provide a television licensable content service, OFCOM are entitled to refuse the application only if—
 - (a) they are required to do so by section 3(3) of the 1990 Act (licences to be held only by fit and proper persons);
 - (b) they are required to do so by section 5 of the 1990 Act (restrictions on the holding of licences); or
 - (c) they are satisfied that, if the application were to be granted, the provision of the service would be likely to involve contraventions of—
 - (i) standards set under section 319 of this Act; or
 - (ii) the provisions of a code of practice in force under Part 5 of the 1996 Act (fairness).
- (4) The provision of more than one television licensable content service shall require a separate licence under Part 1 of the 1990 Act to be granted and held in respect of each service.
- (5) A single licence to provide a television licensable content service may authorise the provision of a service which consists (to any extent) of different programmes to be broadcast simultaneously, or virtually so.
- (6) A licence to provide a television licensable content service shall continue in force until such time as it is surrendered or is revoked in accordance with any of the provisions of this Chapter or of the 1990 Act.
- ^{F8}(7) A licence to provide a television licensable content service must contain such conditions as OFCOM consider appropriate for requiring the licence holder—
 - (a) on entering into any agreement with the provider of a radio multiplex service for the provision of a television licensable content service to be broadcast by means of that multiplex service, to notify OFCOM—
 - (i) of the identity of the radio multiplex service;
 - (ii) of the period during which the service will be provided; and
 - (iii) where under the agreement he will be entitled to the use of a specified amount of digital capacity, of that amount;

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- (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 OFCOM of the variation so far as relating to those matters; and
- (c) where he is providing a television licensable content service to the provider of a radio multiplex service in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify OFCOM of that fact.]

Textual Amendments

F8 S. 235(7) inserted (25.7.2006) by [Television Licensable Content Services Order 2006 \(S.I. 2006/2131\)](#), arts. 1(1), 3

Commencement Information

I4 S. 235 in force at 29.12.2003 by [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

236 Direction to licensee to take remedial action

- (1) This section applies if OFCOM are satisfied—
 - (a) that the holder of a licence to provide a television licensable content service has contravened a condition of the licence; and
 - (b) that the contravention can be appropriately remedied by the inclusion in the licensed service of a correction or a statement of findings (or both).
- (2) OFCOM may direct the licence holder to include a correction or a statement of findings (or both) in the licensed service.
- (3) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.
- (4) OFCOM are not to give a person a direction under this section unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the giving of the direction.
- (5) Where the holder of a licence includes a correction or a statement of findings in the licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.
- (6) If OFCOM are satisfied that the inclusion of a programme in a television licensable content service involved a contravention of a condition of the licence to provide that service, they may direct the holder of the licence not to include that programme in that service on any future occasion.
- (7) Where OFCOM—
 - (a) give a direction to a BBC company under subsection (2), or
 - (b) receive representations from a BBC company by virtue of subsection (4),
 they must send a copy of the direction or representations to the Secretary of State.
- (8) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.

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Modifications etc. (not altering text)

- C1** S. 236(2) modified (20.7.2004) by [Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, **Sch. para. 2(c)** (with art. 5)

Commencement Information

- I5** S. 236 in force at 29.12.2003 by [S.I. 2003/3142](#), art. 3(1), **Sch. 1** (with art. 11)

237 Penalties for contravention of licence condition or direction

- (1) If OFCOM are satisfied that the holder of a licence to provide a television licensable content service—
 - (a) has contravened a condition of the licence, or
 - (b) has failed to comply with a direction given by OFCOM under or by virtue of a provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act,they may serve on him a notice requiring him to pay them, within a specified period, a specified penalty.
- (2) The amount of the penalty under this section must not exceed the maximum penalty given by subsection (3).
- (3) The maximum penalty is whichever is the greater of—
 - (a) £250,000; and
 - (b) 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").
- (4) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3) is to be construed as referring to 5 per cent of the amount which OFCOM estimate will be the qualifying revenue for that accounting period.
- (5) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, are to apply for the purposes of subsection (3) as they apply for the purposes of Part 1 of that Act.
- (6) OFCOM are not to serve a notice on a person under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the service of the notice.
- (7) Where OFCOM—
 - (a) serve a notice on a BBC company under subsection (1), or
 - (b) receive representations from a BBC company by virtue of subsection (6),they must send a copy of the notice or representations to the Secretary of State.
- (8) An exercise by OFCOM of their powers under subsection (1) does not preclude any exercise by them of their powers under section 236 in respect of the same contravention.
- (9) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3)(a).

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- (10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Modifications etc. (not altering text)

C2 S. 237 restricted (8.12.2003) by [The Office of Communications Act 2002 \(Commencement No. 3\) and Communications Act 2003 \(Commencement No. 2\) Order 2003 \(S.I. 2003/3142\)](#), **art. 9** (with **art. 11**)

Commencement Information

I6 S. 237 in force at 29.12.2003 by [S.I. 2003/3142](#), **art. 3(1)**, **Sch. 1** (with **art. 11**)

238 Revocation of television licensable content service licence

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—
- (a) that the holder of the licence is in contravention of a condition of the licence or is failing to comply with a direction given by them under or by virtue of any provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act; and
 - (b) that the contravention or failure, if not remedied, would justify the revocation of the licence.
- (2) A notice under this subsection must—
- (a) state that OFCOM are satisfied as mentioned in subsection (1);
 - (b) specify the respects in which, in their opinion, the licence holder is contravening the condition or failing to comply with the direction; and
 - (c) state that OFCOM will revoke the licence unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified.
- (3) If, at the end of the period specified in a notice under subsection (2), OFCOM are satisfied—
- (a) that the person on whom the notice was served has failed to take the steps specified in it, and
 - (b) that it is necessary in the public interest to revoke his licence,
- they shall serve a notice on him revoking his licence.
- (4) If OFCOM are satisfied in the case of a licence to provide a television licensable content service—
- (a) that the holder of the licence has ceased to provide the licensed service, and
 - (b) that it is appropriate for them to do so,
- they shall serve a notice on him revoking his licence.
- (5) If OFCOM are satisfied—
- (a) that the holder of a licence to provide a television licensable content service has provided them, in connection with his application for the licence, with information which was false in a material particular, or
 - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,

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they may serve a notice on him revoking his licence.

- (6) A notice under this section revoking a licence to provide a television licensable content service takes effect as from the time when it is served on the licence holder.
- (7) OFCOM are not to serve a notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.
- (8) Where OFCOM—
 - (a) serve a notice on a BBC company under this section, or
 - (b) receive representations from a BBC company by virtue of subsection (7),they must send a copy of the notice or representations to the Secretary of State.
- (9) Nothing in this section applies to the revocation of a licence in exercise of the power conferred by section 239.

Commencement Information

I7 S. 238 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

239 Action against licence holders who incite crime or disorder

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—
 - (a) that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder;
 - (b) that, in doing so, he has contravened conditions contained by virtue of Chapter 4 of this Part in the licence to provide that service; and
 - (c) that the contravention is such as to justify the revocation of the licence.
- (2) A notice under this subsection must—
 - (a) state that OFCOM are satisfied as mentioned in subsection (1);
 - (b) specify the respects in which, in their opinion, the licence holder has contravened the condition mentioned in paragraph (b) of that subsection;
 - (c) state that OFCOM may revoke the licence after the end of the period of twenty-one days beginning with the day on which the notice is served on the licence holder; and
 - (d) inform the licence holder of his right to make representations to OFCOM within that period about the matters appearing to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) shall be to suspend the licence as from the time when the notice is served on the licence holder until either—
 - (a) the revocation of the licence takes effect; or
 - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder within the period specified for the purposes of subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they shall serve a notice of revocation on the licence holder.

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- (5) The revocation of a licence by a notice under subsection (4) takes effect from such time as may be specified in the notice.
- (6) A notice of revocation under subsection (4) must not specify a time for it to take effect that falls before the end of the period of twenty-eight days beginning with the day on which the notice is served on the licence holder.

Commencement Information

I8 S. 239 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

240 Abolition of separate licences for certain television services

- (1) The authorisations that are to be capable of being granted on or after the television transfer date by or under a licence under Part 1 of the 1990 Act do not include the authorisation of the provision, as such, of—
 - (a) any satellite television service (as defined, disregarding its repeal by this Act, in section 43(1) of the 1990 Act); or
 - (b) any licensable programme service (as defined, disregarding its repeal by this Act, in section 46(1) of that Act).
- (2) Subsection (1) does not affect OFCOM’s power, by means of a licence authorising the provision of a service falling within section 211(1), to authorise the provision of so much of any formerly regulated television service as is comprised in the licensed service.
- (3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a television licensable content service—
 - (a) shall have effect, on and after the television transfer date, as a licence under Part 1 of the 1990 Act authorising the provision of the television licensable content service comprised in the licensed service;
 - (b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of this Chapter or of the 1990 Act; and
 - (c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the television transfer date.
- (4) It shall be the duty of OFCOM to exercise their power under section 3 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (4)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.
- (5) In this section—

“formerly regulated television service” means a service mentioned in subsection (1); and

“relevant existing licence”, means any licence which—

 - (a) was granted by the Independent Television Commission under Part 1 of the 1990 Act before the television transfer date; and
 - (b) is in force immediately before the television transfer date as a licence authorising the provision of a formerly regulated service.

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Commencement Information

19 S. 240 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

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