

1990 No. 2579

BROADCASTING

**The Broadcasting Complaints Commission and Control
of Misleading Advertisements (Transitional Provisions)
Order 1990**

Made - - - - - *18th December 1990*

Coming into force - - - - - *1st January 1991*

In exercise of the powers conferred upon me by section 200 of, and paragraphs 2 and 3 of Schedule 22 to, the Broadcasting Act 1990(a), I hereby make the following Order:

1.—(1) This Order may be cited as the Broadcasting Complaints Commission and Control of Misleading Advertisements (Transitional Provisions) Order 1990 and shall come into force on 1st January 1991.

(2) In this Order:

“the 1990 Act” means the Broadcasting Act 1990;

“the Fourth Channel”, and references to programmes broadcast thereon, shall be construed in accordance with section 10(2) of the Broadcasting Act 1981(b);

“the IBA” means the Independent Broadcasting Authority;

“the ITC” means the Independent Television Commission;

“the transfer date” means the day appointed under section 127(1) of the 1990 Act.

2.—(1) This article applies to a complaint concerning any programme broadcast by the IBA before the transfer date where that complaint either—

(a) is made on or after that date, or

(b) was made under Part III of the Broadcasting Act 1981 before that date, but has not been disposed of.

(2) Part V of the 1990 Act (functions of the Broadcasting Complaints Commission) shall have effect in relation to a complaint to which this article applies as if—

(a) section 143(2) of that Act included a reference to a programme broadcast by the IBA before the transfer date;

(b) the programme about which the complaint is made had been broadcast by—

(i) the ITC in the case of a television programme other than a programme referred to in paragraph (iii) below,

(ii) the ITC and the Welsh Authority, in the case of a television programme (other than an advertisement) which had been broadcast by the IBA on the Fourth Channel in Wales and was also provided by the IBA under section 10(1) of the Broadcasting Act 1981 for broadcasting on the Fourth Channel elsewhere in the United Kingdom,

(iii) the Welsh Authority in the case of a television programme (other than an advertisement) broadcast by the IBA only on the Fourth Channel in Wales, or

(iv) the Radio Authority, in the case of a sound programme;

- (c) the ITC and the Radio Authority were a broadcasting body within the meaning of Part V of the 1990 Act;
- (d) the Welsh Authority were not a broadcasting body in relation to any broadcast of advertisements on the Fourth Channel in Wales; and
- (e) section 145(5) of the 1990 Act (duty of broadcasting body to retain recordings of broadcast programmes) were omitted.

(3) In this article, "the Fourth Channel in Wales" has the meaning given by section 47(2) of the Broadcasting Act 1981.

3.—(1) This article applies to a complaint concerning any advertisement included before the transfer date in any programme or teletext transmission broadcast by the IBA or in any licensed service where that complaint either—

- (a) is made on or after that date, or
- (b) was made under regulation 8 or 10 of the Control of Misleading Advertisements Regulations 1988(a), as they have effect without the amendments made by paragraph 51 of Schedule 20 to the 1990 Act, before that date, but has not been disposed of.

(2) Subject to paragraph (3) below, regulations 2 and 8 to 11 of the Control of Misleading Advertisements Regulations 1988, as they have effect as amended by paragraph 51 of Schedule 20 to the 1990 Act (but subject to sub-paragraph (a)(i) below), shall have effect in relation to a complaint to which this article applies as if—

- (a) in regulation 2(1)—
 - (i) the amendments made by paragraphs (a) and (c) of paragraph 51(1) of Schedule 20 to the 1990 Act did not have effect;
 - (ii) after the definition of "Director" there were inserted—
 - “the Fourth Channel in Wales” means the Fourth Channel (which expression is to be construed in accordance with section 10(2) of the Broadcasting Act 1981(b)) so far as it consists of programmes broadcast for reception in Wales;” and
 - (iii) before the definition of "the Welsh Authority" there were inserted—
 - “the transfer date” means the day appointed under section 127(1) of the Broadcasting Act 1990; and”;
- (b) in regulation 8(1) for the words "or proposed to be included in a licensed service", there were substituted "in any programme or teletext transmission broadcast by the IBA other than on the Fourth Channel in Wales or in a licensed service before the transfer date";
- (c) regulation 8(2) were omitted;
- (d) in regulation 9(1) for the words from "exercise" onwards, there were substituted "refuse to broadcast the advertisement";
- (e) in regulation 10(1) for the words "or proposed to be broadcast on S4C", there were substituted "in any television programme broadcast on the Fourth Channel in Wales before the transfer date"; and
- (f) regulation 10(2) were omitted.

(3) In relation to a complaint to which this article applies by virtue of sub-paragraph (b) of paragraph (1) above—

- (a) the IBA shall, as soon as practicable, forward to the ITC any such complaint in relation to an advertisement included in—
 - (i) a television programme, other than one broadcast on the Fourth Channel in Wales, or
 - (ii) a teletext transmission;
- (b) the IBA shall, as soon as practicable, forward to the Welsh Authority any such complaint in relation to an advertisement included in a television programme broadcast on the Fourth Channel in Wales;
- (c) the IBA shall, as soon as practicable, forward to the Radio Authority any such complaint in relation to an advertisement included in a sound programme; and

(a) S.I. 1988/915.

(b) 1981 c.68.

- (d) the Cable Authority shall, as soon as practicable, forward to the ITC any such complaint in relation to an advertisement included in a licensed service (within the meaning of regulation 2(1) of the Control of Misleading Advertisements Regulations 1988 as it has effect without the amendment made by paragraph 51(1)(c) of Schedule 20 to the 1990 Act);

and anything done under the Control of Misleading Advertisements Regulations 1988 (as they have effect without the amendments made by paragraph 51 of Schedule 20 to the 1990 Act) by the IBA or the Cable Authority, as the case may be, may be deemed to be done by the body to whom the complaint is forwarded under this paragraph, if that body thinks fit.

- (4) There shall be forwarded with a complaint that is forwarded under paragraph (3) above, a record of the action taken by the IBA or Cable Authority, as the case may be, together with any relevant documents in the Authority's possession.

Home Office

18th December 1990

Kenneth Baker
One of Her Majesty's Principal Secretaries of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision with respect to complaints to the Broadcasting Complaints Commission about programmes broadcast by the Independent Broadcasting Authority ("the IBA") before the transfer date and not disposed of by that date (article 2).

This Order also makes provision with respect to complaints under the Control of Misleading Advertisements Regulations 1988 concerning advertisements included before the transfer date in any programme or teletext transmission broadcast by the IBA before that date or in any service licensed by the Cable Authority and the complaint has not been disposed of by that date (article 3).

"The transfer date" means the day appointed under section 127(1) of the Broadcasting Act 1990 ("the 1990 Act"). 1st January 1991 has been so appointed by the Broadcasting (Transfer Date and Nominated Company) Order 1990 (S.I. 1990/2540).

Article 2(2) of this Order adapts Part V of the 1990 Act (which Part comes into force on 1st January 1991 under article 3 of, and Schedule 2 to, the Broadcasting Act 1990 (Commencement No. 1 and Transitional Provisions) Order 1990 (S.I. 1990/2347) for the purposes of complaints which fall within article 2(1) (and are described in general terms in the first paragraph of this note). In particular, article 2(2)(b) treats the programme about which the complaint is made as being broadcast by one of the bodies therein set out in place of the IBA (whose broadcasting functions are replaced as from the transfer date under Schedule 11 to the 1990 Act).

Article 3(2) of this Order adapts the Control of Misleading Advertisements Regulations 1988, as they have effect as amended by paragraph 51 of Schedule 20 to the 1990 Act (which amendments come into force on 1st January 1991 under the commencement order referred to above), for the purposes of complaints which fall within article 3(1) (and are described in general terms in the second paragraph of this note). Paragraphs (3) and (4) of article 3 provide for the transfer of such complaints from the IBA and the Cable Authority (whose licensing functions cease as from the transfer date under Schedule 12 to the 1990 Act) to the new bodies referred to in article 3(3).

95p net

ISBN 0 11 005651 5

Printed in the UK by HMSO

790/WO2200 C11 12/90 3204507 19542