
STATUTORY INSTRUMENTS

1991 No. 1408

BROADCASTING

The Broadcasting (Independent Productions) Order 1991

Made - - - - *18th June 1991*

Coming into force - - *1st January 1993*

Whereas a draft of this Order has been approved by resolution of each House of Parliament;
Now, therefore, in exercise of the powers conferred upon me by section 16(5) of the Broadcasting Act 1990(1) and after consultation with the Independent Television Commission and (in accordance with section 186(2) of that Act) the British Broadcasting Corporation, I hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Broadcasting (Independent Productions) Order 1991 and shall come into force on 1st January 1993.

(2) In this Order—

“the 1990 Act” means the Broadcasting Act 1990;

“programme” does not include an advertisement or any separate item whose duration is two minutes or less;

“relevant broadcaster” means, subject to article 2(4) below, the person who provides the television broadcasting service in which a percentage of qualifying programmes must be independent productions and “relevant television broadcasting service” means that service; and

“television broadcasting service” has the same meaning as in section 2(5) of the Broadcasting Act 1990.

(3) For the purposes of this Order a programme may be treated as being made by a particular person or persons notwithstanding that more than 75 per cent of the duration of the programme includes images or images and sounds which have been provided by some person other than that person or those persons provided that—

(a) the images or images and sounds so provided are not broadcast live; and

(b) changes of substance (whether by means of editing or otherwise) have been made to such images or images and sounds.

Meaning of “qualifying programmes”

2.—(1) In section 16(2)(h) of the 1990 Act, the expression “qualifying programmes” means, subject to paragraphs (2) to (4) below, all the programmes included in the relevant television broadcasting service which fall within any of the following descriptions of programmes, namely—

- (a) a programme which has been made either by the relevant broadcaster or by a person commissioned by him;
- (b) a programme which has been made by the relevant broadcaster together with any other person or by a person commissioned by the relevant broadcaster together with any other person, provided that not less than 25 per cent of the actual cost of the production of the programme has been borne or provided by the relevant broadcaster; and
- (c) a programme including images or images and sounds which have been provided by a person other than the relevant broadcaster or a person commissioned by him where—
 - (i) the images or images and sounds so provided consist of live coverage of an event;
 - (ii) they do not exceed 75 per cent of the duration of the programme, and
 - (iii) the remainder of the programme (including any sound commentary added to those images or images and sounds) has been made by the relevant broadcaster or a person commissioned by him.

(2) In section 16(2)(h) of the 1990 Act the expression “qualifying programme” shall not include any programme which falls within any of the following descriptions, namely—

- (a) a programme which has previously been shown in substantially the same form on the relevant television broadcasting service;
- (b) a programme which consists, wholly or mainly, of news;
- (c) a programme constituting part of a series of programmes which—
 - (i) consist, wholly or mainly, of news or items relevant to news,
 - (ii) are presented live, and
 - (iii) are usually shown on at least four days in each of the weeks when they are shown;
- (d) a programme provided by or on behalf of the Open University or Open College; and
- (e) a broadcast on behalf of a political party or any statement by a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975(2).

(3) A programme may fall within sub-paragraph (a) or (b) of paragraph (1) above as being commissioned by the relevant broadcaster notwithstanding that it was intended to be first shown commercially in cinemas.

(4) In the application of paragraph (1) above to a regional Channel 3 service, references to the relevant broadcaster shall include references to the holder of another regional Channel 3 service licence or any person acting on behalf of the holders of such licences.

Meaning of “independent productions”

3.—(1) In section 16(2)(h) of the 1990 Act the expression “independent productions” means any programme which—

- (a) falls within the definition of “qualifying programmes” specified in article 2 above;
- (b) in the case of a programme to which sub-paragraph (a) or (b) of article 2(1) above applies, has been made by an independent producer (as defined by paragraph (4) below) or, in the case of a programme to which sub-paragraph (c) of that provision applies, has been made,

as respects that part of the programme referred to in paragraph (iii) of that sub-paragraph by an independent producer;

- (c) has been made in pursuance of a contract which complies, where appropriate, with the condition specified in paragraph (2) below, and
- (d) has not been made in the circumstances specified in paragraph (3) below.

(2) The condition referred to in paragraph (1)(c) above is that any contractual obligations between a broadcaster and a producer which concern, directly or indirectly, the making of programmes (but not in respect of the use made of them) and which are capable of remaining in force for a period in excess of five years shall provide either side with the right to terminate those obligations at intervals of not more than five years (but without prejudice to any rights in respect of obligations that had not been discharged at the date of termination).

(3) The circumstances referred to in paragraph (1)(d) above are those where a broadcaster has required, otherwise than in pursuance of any contractual obligation arising from an earlier agreement that remains in force, the person to whom the contract to make the programme has been granted to agree, as a condition on which that contract is granted, to use the production facilities of that broadcaster or not to use the production facilities of some other broadcaster.

In this paragraph the reference to the production facilities of a broadcaster means—

- (a) any premises or equipment which may be used to make a programme and which are owned or leased by that broadcaster or are otherwise under his control; and
 - (b) any person who is employed by, or has contractual obligations with, that broadcaster in connection with the making of programmes except any person who is employed, or has contractual obligations, to be seen or heard (or both) on programmes.
- (4) In this article “independent producer” means a producer—
- (a) who is not an employee (whether or not on temporary leave of absence) of a broadcaster;
 - (b) who does not have a shareholding greater than 15 per cent in a broadcaster; and
 - (c) which is not a body corporate in which a broadcaster has a shareholding greater than 15 per cent.

(5) In paragraph (4) above, any reference to a broadcaster or producer includes a reference to a person connected with, respectively, a broadcaster or producer.

For these purposes the following persons shall be treated as connected with, respectively, a broadcaster or producer, namely—

- (a) a person who controls the broadcaster or, as the case may be, producer;
- (b) an associate of the broadcaster or, as the case may be, producer or of a person falling within sub-paragraph (a) above; and
- (c) a body which is controlled by the broadcaster or, as the case may be, producer or by an associate of the broadcaster or, as the case may be, producer.

In this paragraph “associate” has the same meaning as in Schedule 2 to the 1990 Act, except that paragraph 1(2) of Part I of that Schedule shall not apply so as to construe the meaning of that word in relation to a producer (but not a broadcaster) in the context of sub-paragraph (a) of paragraph (4) above only.

(6) In paragraph (4) above, any reference however expressed to a person having a shareholding greater than 15 per cent in a body corporate is a reference to a person who—

- (a) holds or is beneficially entitled to more than 15 per cent of the shares in that body, or
- (b) possesses more than 15 per cent of the voting power in that body.

Any reference in this paragraph to a person holding or being entitled to a percentage of shares in a body corporate or possessing a percentage of the voting power in a body corporate is a reference

to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.

(7) In this article—

“broadcaster” means, subject to paragraph (5) above, a person who provides a television service (that is to say a service providing to members of the public images or images and sounds for reception on television receiving apparatus, whether provided by broadcasting or by other means) whether in the United Kingdom or elsewhere;

“control” has the same meaning as in Schedule 2 to the 1990 Act; and

“producer” means, subject to paragraph (5) above, a person by whom the arrangements necessary for—

- (i) the making of a programme, or
- (ii) in the case of a programme to which article 2(1)(c) above applies, part of a programme, are undertaken.

Home Office
18th June 1991

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order defines the expressions “qualifying programmes” and “independent productions” for the purposes of section 16(2)(h) of the Broadcasting Act 1990 (requirements with which a regional Channel 3 service should comply). The definitions are also applied by section 25(4) of that Act (Channel 4), section 29(2) (Channel 5), section 44(4)(b) (domestic satellite service) and section 186(2)(a) (the British Broadcasting Corporation).

Article 2(1) of this Order defines “qualifying programmes” as programmes which are made by the relevant broadcaster or by a person commissioned by him whether they are so made or commissioned only by the relevant broadcaster (sub-paragraph (a)) or, subject to the specified financial contribution, by him together with some other person (sub-paragraph (b)). The definition also includes programmes consisting of live coverage of events when such coverage has been provided by a person other than the broadcaster or a person commissioned by him provided the conditions in article 2(1)(c) are satisfied. Article 2(2) excludes certain descriptions of programmes from this definition. Article 2(3) concerns the commissioning of programmes originally intended for showing in the cinema and article 2(4) makes adaptations which are only relevant to regional Channel 3 services.

Article 3(1) of this Order defines “independent productions” as those qualifying programmes which have been made by an independent producer as defined (subject to special provision in respect of programmes falling within article 2(1)(c)) and which satisfy article 3(2) (which concerns long term contractual obligations between producers and broadcasters) and do not contravene article 3(3) (which concerns requirements to use a broadcaster’s production facilities, as defined, or not to use those of another broadcaster). Paragraph (4) of article 3 defines “independent producer” for these purposes and paragraphs (5) and (6) supplement that definition. Further definitions are included in article 3(7).