
STATUTORY INSTRUMENTS

1996 No. 3151

TELECOMMUNICATIONS

The Advanced Television Services Regulations 1996

Made - - - - *17th December 1996*
Laid before Parliament *17th December 1996*
Coming into force - - *7th January 1997*

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to advanced television services including digital conditional access and subscription management services, in exercise of the powers conferred on him by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

PART I
INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Advanced Television Services Regulations 1996 and shall come into force on 7th January 1997.

Revocation

2. The Advanced Television Services (Industrial Property Rights) Regulations 1996⁽³⁾ are hereby revoked.

Interpretation

3.—(1) In these Regulations, “the Directive” means Directive [95/47/EC](#) of the European Parliament and of the Council on the use of standards for the transmission of television signals⁽⁴⁾, and words and expressions used in these Regulations shall, unless the context otherwise requires, have the same meaning as in the Directive.

(1) [S.I.1996/266](#).

(2) [1972 c. 68](#).

(3) [S.I. 1996/2185](#).

(4) O.J. No. L281, 23.11.95, p. 51.

(2) In these Regulations–

- “the 1984 Act” means the Telecommunications Act 1984⁽⁵⁾;
- “the 1990 Act” means the Broadcasting Act 1990⁽⁶⁾;
- “the 1996 Act” means the Broadcasting Act 1996⁽⁷⁾;
- “advanced television services” includes wide-screen television services, high definition television services and television services using fully digital transmission systems;
- “the Article 4(e) procedures” has the meaning given by regulation 15(1);
- “the BBC” means the British Broadcasting Corporation;
- “broadcaster” includes a multiplex operator;
- “the Commission” means the Commission of the European Communities;
- “the Community” means the European Community;
- “domestic satellite licence” means a licence granted under section 44 of the 1990 Act;
- “essential component” means the smart card or other technological component in electronic or tangible form, which is necessary for the reception of authorisation signals and thus to enable subscribers to view digital television services, in or upon which is mapped the subscriber’s viewing entitlements, for insertion or incorporation into or other interoperation with the decoder;
- “the ITC” means the Independent Television Commission;
- “local delivery service licence” means both a licence granted under Part II of the 1990 Act and a licence to provide a prescribed diffusion service continuing in force by virtue of section 134 and Part II of Schedule 12 of the 1990 Act;
- “multiplex operator” means a person holding a licence granted under Part I of the 1996 Act to provide a multiplex service as defined by section 1(1) of that Act;
- “non-domestic satellite licence” means a licence granted under section 45 of the 1990 Act;
- “recognised European standardisation body” means the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunication Standards Institute (ETSI);
- “rent out” in relation to any television set or other equipment means the first supplying of that set or equipment pursuant to the making of a rental agreement;
- “sell” includes transfer by means of conditional sale or hire purchase, and “offer for sale” and “expose for sale” shall be construed accordingly; and
- “wide-screen television service” means a television service consisting of programmes produced and edited to be displayed on a wide screen format; and for the purposes of this definition, the 16:9 format is the reference format for wide-format television services, and “wide-screen format”, “wide-screen 16:9 format” and “wide-format services” shall be construed accordingly.

(3) Any provision of these Regulations which is expressed as applying irrespective of the means of transmission of the television services concerned applies whether the services are transmitted by cable, satellite or terrestrial means.

(4) In these Regulations, unless the context otherwise requires, and subject to (1) above, words and expressions shall have the same meaning as in the 1984 Act.

(5) 1984 c. 12.

(6) 1990 c. 42.

(7) 1996 c. 55.

(5) A reference in these Regulations to a licence of any description is, save in paragraph 3 of Schedule 1, a reference to a licence of that description whether granted before or after these Regulations come into force, provided however that nothing in these Regulations which has effect as a provision of such a licence shall be taken to have effect in respect of any period before these Regulations come into force.

PART II

ADVANCED TELEVISION SERVICES

Transmission of wide-screen services on digital networks

4.—(1) Any person operating a fully digital transmission network open to the public for the distribution of television services shall have the duty to ensure that that network is capable of distributing wide-format services.

(2) The requirement set out in paragraph (1) above shall have effect as if it was set out as a condition in every licence to run a telecommunication system granted under section 7 of the 1984 Act which authorises (however expressed) the provision of telecommunication services comprising transmission of digital services to viewers.

Standards for transmission systems used by the BBC

5.—(1) This regulation applies to all television services provided by the BBC which—

- (a) are transmitted to viewers in the Community whether by cable, satellite or terrestrial means; and
- (b) which are—
 - (i) in wide-screen format;
 - (ii) in high definition and not fully digital.

(2) Without prejudice to section 142 of the 1996 Act (which implements the provisions of Article 2 to the Directive concerning transmission systems in relation to every licensed service as defined in subsection (7) of that section), the BBC shall do all that it can to secure that all television services to which this regulation applies use a transmission system complying with the said Article 2.

Television sets to have open interface

6.—(1) No person shall in the United Kingdom sell or rent out, or offer or expose for sale or rent, a television set to which this regulation applies unless that television set is fitted with at least one open interface socket (as standardised by a recognised European standardisation body, where a standard has been adopted by such a body and is in force) permitting simple connection of peripherals, which includes, without prejudice to the generality thereof, additional decoders and digital receivers.

(2) This regulation applies to any television set with an integral viewing screen of visible diagonal greater than 42 cm except a television set which was put on the market for sale or rent in the Community before 23rd August 1996.

Redistribution by cable of wide-screen services

7.—(1) Wide-screen television services which are received by, and re-distributed on, cable television systems shall be re-distributed on such systems at least in the wide-screen 16:9 format.

(2) The requirement set out in paragraph (1) above shall have effect as if it was set out in every local delivery service licence.

PART III

CONDITIONAL ACCESS

Application and interpretation

8.—(1) This Part applies in relation to conditional access to digital television services broadcast to viewers in the Community, irrespective of the means of transmission.

(2) Schedule 1 to these Regulations shall have effect for the purposes of modifying the application of the 1984 Act in relation to systems by means of which conditional access services are provided to broadcasters.

Requirements for descramblers

9.—(1) No person shall in the United Kingdom sell or rent out, or otherwise make available, or offer or expose for sale or rent or otherwise making available any consumer equipment to which this regulation applies unless that equipment possesses the capability—

- (a) to allow the descrambling of digital television signals according to the common European scrambling algorithm as administered by a recognised European standardisation body; and
- (b) to display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

(2) This regulation applies to all consumer equipment capable of descrambling digital television signals which is sold, rented or otherwise made available or is offered for sale or rent or otherwise making available except equipment which was first on the market in the Community before 23rd August 1996.

Transcontrol

10.—(1) It shall be the duty of any person operating a conditional access system on the market to ensure that such system has the necessary technical capability for cost-effective transcontrol at cable head-ends allowing the possibility for full control by cable television operators at local or regional level of the services using such conditional access system.

(2) For the purposes of the following provisions of this regulation—

- (a) the duty referred to in paragraph (1) above is referred to as the primary duty;
- (b) the duty to co-operate, provided for in paragraph (3) below is referred to as the supplemental duty;
- (c) the person upon whom the primary duty is imposed by paragraph (1) above or would be so imposed in the circumstances referred to in paragraph (4) below is referred to as the offeror; and
- (d) the person to whom the primary duty is owed as referred to in paragraph (7) below or would be so owed is referred to as the offeree.

(3) The offeror, subject to performance by the offeree of the operative condition, shall have the supplemental duty when requested so to do by the offeree to co-operate with him to ensure that the offeree is in a position to take reasonable advantage of the performance by the offeror of the primary duty.

(4) The circumstances in which the supplemental duty shall apply are that the offeror—

- (a) is for the time being subject to the primary duty; or

- (b) notwithstanding that the primary duty has not yet arisen, the offeror is in the process of designing a conditional access system or otherwise making preparations to operate such system on the market,

and the offeree has expressed an intention to transmit the digital television services of other broadcasters.

(5) Without prejudice to the generality of the supplemental duty, such duty includes the duty to disclose adequate and timely information concerning the conditional access system to the offeree as is reasonably sufficient in all the circumstances of the case to—

- (a) enable the offeree to take reasonable advantage of the performance of the primary duty; and
- (b) ensure that the offeree is not placed at a disadvantage when compared to other offerees or, where the offeror is a broadcaster, with the offeror himself.

(6) The operative condition is that the offeree has given the offeror an undertaking in writing that information supplied to the offeree pursuant to the supplemental duty shall be kept confidential and shall (together with all copies thereof) be returned to the offeror should the offeree no longer require that the primary duty be performed in relation to him.

(7) The duties referred to in paragraphs (1) and (3) above are duties owed to any person who may be affected by a contravention of them and without prejudice to any other cause of action which may arise therefrom any breach of such duty which causes that person to sustain loss or damage shall be actionable in tort or, in Scotland, delict at the suit or instance of that person.

Obligations of operators of conditional access services

11.—(1) It shall be the duty of operators of conditional access services, irrespective of the means of transmission, who produce and market access services to digital television services—

- (a) to offer to all broadcasters, on a fair, reasonable and non-discriminatory basis, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers authorised by means of decoders administered by the service operators;
- (b) to keep separate financial accounts regarding their activity as conditional access providers.

(2) A digital television service may take advantage of the provisions in paragraph (1) above only if the services offered comply with the relevant Community obligations in force.

(3) For the purposes of the following provisions of this regulation—

- (a) the duty referred to in paragraph (1) above is referred to as the primary duty;
- (b) the duty to co-operate, provided for in paragraph (4) below is referred to as the supplemental duty;
- (c) the person upon whom the primary duty is imposed by paragraph (1) above or would be so imposed in the circumstances referred to in paragraph (5) below is referred to as the offeror; and
- (d) the person to whom the primary duty is owed as referred to in paragraph (9) below or would be so owed is referred to as the offeree.

(4) The offeror, subject to performance by the offeree of the operative condition, shall have the supplemental duty when requested so to do by the offeree to co-operate with him to ensure that the offeree is in a position to take reasonable advantage of the performance by the offeror of the primary duty.

(5) The circumstances in which the supplemental duty shall apply are that the offeror—

- (a) is for the time being subject to the primary duty; or

(b) notwithstanding that the primary duty has not yet arisen, the offeror is making preparations to provide technical services—

(i) to another offeree; or

(ii) where the offeror is himself a broadcaster, to himself, if he intends to provide such services to any other offeree,

and the offeree has expressed an intention to use the technical services of the offeror.

(6) For the purposes of paragraph (5)(b)(ii) above, whether the offeror intends at any given time to provide technical services to any other offeree may be determined in accordance with the inferences to be drawn from his conduct and all the relevant circumstances of the case.

(7) Without prejudice to the generality of the supplemental duty, such duty includes the duty to disclose adequate and timely information concerning the conditional access system to the offeree as is reasonably sufficient in all the circumstances of the case to—

(a) enable the offeree to take reasonable advantage of the performance of the primary duty; and

(b) ensure that the offeree is not placed at a disadvantage when compared to other offerees or, where the offeror is a broadcaster, with the offeror himself.

(8) The operative condition is that the offeree has given the offeror an undertaking in writing that information supplied to the offeree pursuant to the supplemental duty shall be kept confidential and shall (together with all copies thereof) be returned to the offeror should the offeree no longer require that the primary duty be performed in relation to him.

(9) Each of the duties referred to in paragraphs (1) and (4) above is a duty owed to any person who may be affected by a breach of it and without prejudice to any other cause of action which may arise therefrom any breach of such duty which causes that person to sustain loss or damage shall be actionable in tort or, in Scotland, delict at the suit or instance of that person.

Form of broadcasters' tariffs

12.—(1) Broadcasters shall publish a list of tariffs for the viewer which takes into account whether associated equipment is supplied or not.

(2) The requirement set out in paragraph (1) above shall have effect as if it was set out in—

(a) every local delivery service licence, being a licence which authorises the delivery of digital television services, in relation to cable television operators;

(b) every television programme service licence or multiplex licence granted under Part I of the 1996 Act (including in either case any licence granted to the BBC), provided that where the person who provides a television programme service and the person who operates the multiplex are different persons, the requirement shall have the effect that it shall be a sufficient compliance by one such person if that person ensures that the other such person complies with the requirement in full;

(c) every domestic satellite service licence and non-domestic satellite service licence, in each case being a licence which authorises the provision of digital television services, in relation to satellite broadcasters;

(d) the Agreement between the Secretary of State and the BBC dated 25th January 1996⁽⁸⁾.

⁽⁸⁾ CMND 3152. The Agreement came into force on 6th May 1996 together with the current edition of the BBC's Charter.

Industrial property rights to conditional access products and systems

13.—(1) When granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems shall have the duty to ensure that this is done on fair, reasonable and non-discriminatory terms.

(2) Without prejudice to the generality of paragraph (1) above, taking into account technical and commercial factors, holders of such rights shall have the duty not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of—

- (a) a common interface allowing connection with several other conditional access systems; or
- (b) means specific to another conditional access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

(3) Each duty referred to in paragraph (1) and (2) above is a duty owed to any person who may be affected by a breach of it, and without prejudice to any other cause of action which may arise therefrom—

- (a) any breach of such duty which causes that person to sustain loss or damage shall be actionable in tort or, in Scotland, delict at the suit or instance of that person; and
- (b) any condition included in a licence in contravention of the duty referred to in paragraph (2) above shall be void.

(4) In any proceedings in respect of the infringement of any industrial property rights to which the duties referred to in paragraphs (1) and (2) above relate, it shall be a defence for the defendant or, in Scotland, the defender—

- (a) to show that the infringement consisted only in acts or omissions which would not have constituted an infringement if the holder of such rights had complied with those duties; and
- (b) to undertake to make such payments to the holder of such rights (in respect of both past, present and future use) and to abide by such other fair, reasonable and non-discriminatory terms as the court may order.

(5) Without prejudice to the court's jurisdiction to make a declaration or declarator apart from this paragraph, a declaration or declarator that an act or omission would not, or a proposed act or omission would not, constitute an infringement of any industrial property rights if the holder of such rights had complied or were to comply with the duties referred to in paragraphs (1) and (2) above, may be made by the court in proceedings between the person doing or proposing to do the act or making or proposing to make the omission and the holder of such rights, notwithstanding that no assertion to the contrary has been made by the holder, if it is shown—

- (a) that the person has applied in writing to the holder for a written acknowledgement to the effect of the declaration or declarator claimed, and has furnished him with full particulars in writing of the act or omission in question; and
- (b) that the holder has refused or failed to give any such acknowledgement.

Integrated decoders

14.—(1) No person shall in the United Kingdom sell or rent out, or otherwise make available, or offer or expose for sale or rent or otherwise making available, any television set to which this regulation applies unless that television set allows for the option of fitting at least one standardised socket permitting connection of conditional access and other elements of a digital television system to the digital decoder.

(2) This regulation applies to any television set which contains an integrated decoder except any such television set which was put on the market in the Community before 23rd August 1996.

Dispute resolution procedures

15.—(1) The Director shall from time to time establish and maintain in force appropriate dispute resolution procedures (“the Article 4(e) dispute resolution procedures”) to which any party having an unresolved dispute concerning the application of any provision of this Part shall have easy, and in principle inexpensive, access, with the objective of resolving such disputes in a fair, timely and transparent manner.

(2) The Article 4(e) dispute resolution procedures—

- (a) shall not preclude an action at law from either side; and
- (b) are without prejudice to any action that the Commission or any member State may take pursuant to the Community Treaties.

(3) The Article 4(e) dispute resolution procedures shall provide for the appointment by the Director of an independent person—

- (a) nominated by the parties to the dispute; or
- (b) in default of agreement between the parties, and subject to (8) below, either the Director or another person nominated by him according to the procedures established by him,

to act as a conciliator to assist the parties to resolve their dispute in accordance with those procedures.

(4) Where the parties so agree—

- (a) in their application for the appointment of a conciliator; or
- (b) following notification of the findings of the conciliator,

such findings shall be binding on the parties and shall, subject to paragraph (6), have effect as a contract between the parties.

(5) The reasonable costs or expenses incurred by the conciliator in performing his functions under this regulation shall be set out in his findings and shall be met by the parties in equal shares:

Provided that, where it appears to the conciliator that, having regard to the conduct and means of the parties and any other relevant circumstances, it would be appropriate to share the costs or expenses in some other manner, he shall set out in his findings as to the apportionment of the costs and the reasons therefor.

(6) The findings of the conciliator, in so far as they relate to his costs or expenses, shall be enforceable as against any party in respect of his share determined in accordance with paragraph (5) above—

- (a) in England and Wales and in Northern Ireland as if it were a judgement of a county court; and
- (b) in Scotland as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

(7) On the expiry of two months (or such longer period as the parties to the dispute and the conciliator may agree) commencing on the date of the appointment of the conciliator, the dispute resolution procedure shall be taken to be completed, notwithstanding that the parties have not reached agreement and the conciliator has not included in his findings anything material to the resolution of the dispute.

(8) In paragraph (3) above, ‘independent person’ means a person independent of the parties to the dispute.

PART IV

ENFORCEMENT

Enforcement provisions in relation to regulations 6, 9 and 14

16. Schedule 2 to these Regulations shall have effect for the purposes of the enforcement of regulations 6, 9 and 14.

Enforcement by the Director

17.—(1) Except as provided for in paragraph (2) below, without prejudice to any right which any person may have by virtue of any provision of these Regulations or otherwise to bring civil proceedings in respect of any breach or apprehended breach of any duty referred to in such provision, or to have any dispute concerning that duty resolved pursuant to the Article 4(e) dispute resolution procedures, compliance with that duty shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.

(2) Paragraph (1) above shall not apply to—

- (a) the duties referred to in regulations 6, 9 and 14; or
- (b) the duty referred to in regulation 12.

17th December 1996

Ian Taylor
Parliamentary Under Secretary of State for
Science & Technology,
Department of Trade & Industry

SCHEDULE 1

Regulation 8(2)

MODIFICATION OF THE APPLICATION OF THE TELECOMMUNICATIONS
ACT 1984 AND OF CERTAIN LICENCES GRANTED THEREUNDER

Certain systems to be treated as telecommunication systems

1. For the purposes of sections 3 to 7, 12 to 19 and Part III of the 1984 Act—
 - (a) a conditional access system used for the purposes of providing subscriber management services shall to the extent which it is so used be treated as a telecommunication system even though it would not be so treated apart from this paragraph (in this paragraph referred to as a “deemed system”);
 - (b) subscriber management services provided by means of a deemed system shall be treated as telecommunication services.

Disapplication of section 6

2.—(1) Subject to sub-paragraph (2) below, Subsection 2(b) of section 6 of the 1984 Act (exemption from the requirement for a telecommunication licence for systems situated on a single set of premises) shall not apply to the running by a person of any conditional access system.

(2) Nothing in sub-paragraph (1) above shall affect the exemption in the said subsection (2)(b) as it relates to any conditional access system which is run:

- (i) by a broadcaster and is used to provide conditional access services for himself only; or
- (ii) by any other person only to enable him to receive digital television services.

Disapplication of existing licences

3.—(1) Every licence granted under section 7 of the 1984 Act before the coming into force of these Regulations (whether granted to all persons, to persons of a class or to a particular person) which authorises (however expressed) the running of a telecommunication system and the provision by means thereof of conditional access services to digital television services to any other person by the person to whom the licence is granted or any person being a member of the class of persons to whom the licence is granted shall, upon the coming into force of these Regulations, cease to authorise the running of such system in so far as it is used for the purposes of the provision by the Licensee of such services.

(2) Where a person provides conditional access services to digital television services for his own use by means of telecommunication systems in respect of which a licence has ceased to apply by reason only of (1) above, any other licence granted under section 7 of the 1984 Act by which that person is otherwise authorised to run telecommunication systems and provide conditional access services for his own use shall cease to authorise the running of telecommunication systems in so far as used for the provision by him of such services.

SCHEDULE 2

Regulation 16

ENFORCEMENT OF REGULATIONS 6, 9 AND 14

Enforcement of the relevant provisions

1.—(1) This Schedule shall have effect for the purposes of providing for the enforcement of regulations 6(1), 9(1) and 14(1), and in this Schedule, each such provision is hereinafter referred to as a “relevant provision”.

(2) Nothing in paragraphs 4 or 5 below shall be taken to authorise the taking of any action in relation to any equipment which has been sold or rented out or otherwise made available as the case may be to a viewer, where the viewer has physically taken delivery of the equipment, provided that—

- (a) nothing in this paragraph shall prevent an enforcement authority or an officer of such authority from taking any other action authorised by this Schedule in relation to such equipment; or
- (b) nothing in this Schedule shall prevent the viewer from taking any action or bringing any proceedings which he might otherwise take or bring in respect of such equipment.

Enforcement authorities

2.—(1) It shall be the duty of the following authorities to enforce the relevant provisions—

- (a) in England and Wales, weights and measures authorities; and
- (b) in Northern Ireland, the Department of Economic Development.

(2) The Secretary of State may enforce the relevant provisions.

(3) In this Schedule, “enforcement authority” means any person who is, pursuant to the provisions of this paragraph, authorised to enforce the relevant provisions.

Test purchases

3.—(1) An enforcement authority shall have the power, for the purposes of ascertaining whether any equipment which is required to comply with a relevant provision does in fact so comply, to make, or authorise an officer of the authority to make, any purchase of equipment.

(2) Where—

- (a) any equipment purchased pursuant to this paragraph by or on behalf of an enforcement authority is submitted to a test;
- (b) the test leads to the bringing of forfeiture proceedings in respect of that equipment or equipment of the same description pursuant to paragraph 7 or 8 below; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the equipment was purchased or any person who is a party to the proceedings or has an interest in any equipment to which the notice relates to have the apparatus tested.

(3) In this paragraph, “purchase” includes, where equipment is only available to rent, renting, and where consumer equipment capable of descrambling digital television signals is only made available by a method otherwise than by way of sale or rent, obtaining such equipment by that method, and cognate expressions shall be construed accordingly.

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Powers of search etc.

4.—(1) Subject to paragraph 5 below, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this paragraph.

(2) The officer may, for the purposes of ascertaining whether there has been a contravention of a relevant provision—

- (a) inspect any equipment and enter any premises other than premises occupied only as a person's residence; or
- (b) examine any procedure connected with the production of any equipment.

(3) If the officer has reasonable grounds for suspecting that there has been a contravention of a relevant provision, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain any equipment.

(4) The officer may seize and detain—

- (a) any document, record or information or any other thing which he has reasonable grounds for believing may be required—
 - (i) as evidence in proceedings for forfeiture under paragraph 7 or 8 below; or
 - (ii) by the authorities of a member State other than the United Kingdom for the purposes of the exercise of its functions with regard to the Directive;
- (b) any equipment which he has reasonable grounds for suspecting may be liable to be forfeited.

(5) The officer may, for the purposes of the exercise of his powers under sub-paragraphs (3) or (4) above to seize any equipment, any document, record or information or any other thing—

- (a) require any person having authority to do so to open any container; and
- (b) himself open or break open any such container where a requirement made under sub-paragraph (a) above in relation to the container has not been complied with.

Provisions supplemental to paragraph 4

5.—(1) An officer seizing any equipment, documents, records or information or any other thing under paragraph 4 above shall inform the person from whom they are seized that such equipment, document, record or information or other thing have been so seized.

(2) If a justice of the peace—

- (a) is satisfied by any written information on oath that there are reasonable grounds for believing either—
 - (i) that any equipment, documents, records or information or any other thing which any officer has power to inspect under paragraph 4 above are on any premises (which may be premises occupied only as a person's residence) and that such inspection is likely to disclose evidence that there has been a contravention of a relevant provision; or
 - (ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and
- (b) is also satisfied by any such information either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of an intention to apply for a warrant under this sub-paragraph has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of paragraph 4 above or a warrant under sub-paragraph (2) of this paragraph may take with him such other persons and such equipment as may appear to him to be necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under sub-paragraph (2) of this paragraph, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) Where any equipment seized by an officer under paragraph 4 above is submitted to a test, the officer shall inform the person mentioned in sub-paragraph (1) of this paragraph of the result of the test and, if—

(a) proceedings are brought in respect of a contravention of a relevant provision for the forfeiture of the equipment concerned; and

(b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or has an interest in the equipment to have the equipment tested.

(6) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

Appeals against detention of equipment

6.—(1) Any person having an interest in any equipment, document, record, information or other thing which is for the time being detained under any provision of this Schedule by an enforcement authority or by an officer if such an authority may apply for an order requiring such item to be released to him or to another person.

(2) An application under this paragraph may be made—

(a) to any magistrates' court in which proceedings for forfeiture have been brought in England and Wales and Northern Ireland; or

(b) where no such proceedings have been brought, by way of complaint to a magistrates' court.

(3) On an application under this paragraph to a magistrates' court, an order requiring equipment to be released shall be made only if the court is satisfied—

(a) that proceedings for the forfeiture of the equipment under paragraph 7 below have not been brought, or, having been brought, have been concluded without the equipment being forfeited; and

(b) where no such proceedings have been brought, that more than six months have elapsed since the equipment was seized.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

(a) in England and Wales, to the Crown Court;

(b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any

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application under section 111 of the Magistrates' Courts Act 1980⁽⁹⁾ or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹⁰⁾.

Proceedings in England and Wales or Northern Ireland for forfeiture

7.—(1) Where in England and Wales or Northern Ireland any equipment has been seized and detained by an officer of an enforcement authority pursuant to paragraph 4 above, an officer of that authority may apply to a justice of the peace acting for the petty sessions area in which the equipment was seized (referred to below in this paragraph as the relevant petty sessions area) to initiate proceedings for forfeiture of the equipment under this paragraph.

(2) An application under this paragraph must be made within the period of six months beginning with the date on which the equipment to which it relates was seized.

(3) A justice of the peace to whom an application under this paragraph is made may issue a summons to any person appearing to him to be the owner of or otherwise interested in any equipment to which the application relates requiring him to appear on a day specified in the summons before a magistrates' court acting for the relevant petty sessions area to show cause why the equipment should not be forfeited.

(4) In addition to the person summoned, any other person claiming to be the owner of or otherwise interested in any equipment to which an application under this paragraph relates shall be entitled to appear before the court on the day specified in the summons to show cause why it should not be forfeited.

(5) Subject to the following provisions of this paragraph, where any equipment is brought before a magistrates' court in proceedings under this paragraph and the court is satisfied that the equipment contravenes the relevant provision, the court shall order the equipment to be forfeited to the enforcement authority concerned, unless the person summoned or any other person entitled to appear before the court for that purpose shows cause why the equipment should not be forfeited.

(6) If the person summoned does not appear, the court shall not make an order under this paragraph unless service of the summons is proved.

(7) Where in any proceedings under this paragraph an order is made for the forfeiture of any equipment, any person who appeared, or who was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.

(8) No order for the forfeiture of any equipment made under this paragraph shall take effect—

- (a) until the end of the period of twenty-one days after the day on which the order is made; or
- (b) if appeal proceedings are brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the conclusion of those proceedings.

(9) If a magistrates' court does not order forfeiture of any equipment brought before it in proceedings under this paragraph the court may if it thinks fit order the person on whose application the proceedings were initiated to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why the equipment should not be forfeited; and costs ordered to be paid under this sub-paragraph shall be enforceable as a civil debt.

(10) Any equipment ordered to be forfeited under this paragraph may be disposed of by the enforcement authority concerned in such manner as it thinks fit.

(11) This paragraph has effect notwithstanding anything in section 140 of the Magistrates' Courts Act 1980 or article 58 of the Magistrates' Courts (Northern Ireland) Order 1981 (disposal of non-pecuniary forfeitures).

⁽⁹⁾ 1980 c. 43.

⁽¹⁰⁾ S.I. 1981/1675 (N.I. 26) (statement of case).

(12) In the application of this paragraph to Northern Ireland references to a petty sessions area shall be read as references to a petty sessions district.

Power of the court to require matter to be remedied

8.—(1) Where an application is made for the forfeiture of any equipment in respect of any matters which it appears to the court to be matters which it is in the power of any person who appears or who is entitled to appear to show cause why such equipment should not be forfeited to remedy, the court may, instead of ordering the equipment to be forfeited, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under sub-paragraph (1) above may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this sub-paragraph, as the case may be.

Recovery of expenses of enforcement

9.—(1) This paragraph applies where a court makes an order under paragraph 7 or 8 above.

(2) The court may (in addition to any other order it may make as to costs) order the person appearing to be the owner of or otherwise interested in the equipment or from whom the equipment was seized, to reimburse the enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in investigating the contravention, and, without prejudice to the generality of the foregoing, in having the equipment tested; or
- (b) in connection with any seizure or detention of the equipment by or on behalf of the authority.

Application in England and Wales of certain provisions of the Police and Criminal Evidence Act 1984

10.—(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, sections 15, 16, 20 and 21 of the Police and Criminal Evidence Act 1984⁽¹¹⁾ shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to England and Wales only.

Application in Northern Ireland of certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989

11.—(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, articles 17, 18, 22 and 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989⁽¹²⁾ shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to Northern Ireland only.

Interpretation

12.—(1) In this Schedule—
“equipment” means—

⁽¹¹⁾ 1984 c. 60.

⁽¹²⁾ S.I. 1989/1341 (N.I. 12).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) a relation to regulation 6, a television set;
- (b) in relation to regulation 9, consumer equipment capable of descrambling digital television signals; and
- (c) in relation to regulation 14, a television set containing an integrated digital decoders; “forfeiture” means forfeiture under paragraph 7 above, and “forfeited” shall be construed accordingly; and “premises” includes any place and, in particular, includes—
 - (a) any vehicle, vessel, aircraft or hovercraft;
 - (b) any offshore installation; and
 - (c) any tent or movable structure,and in this definition, “offshore installation” has the meaning given to it by section 1 of the Mineral Workings (Offshore Installations) Act 1971(13).

(2) In this Schedule, “document, record or information” includes any computer disk or other electronic, magnetic or electromagnetic means upon which the document, record or information is or is reasonably believed to be stored.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the provisions of Directive 95/47/EC of the European Parliament and of the Council on the use of standards for the transmission of television signals (O.J. No. L281, 23.11.95, p. 51; “the Directive”), with the exception of Article 1, and Article 2 to the extent that it affects broadcasters other than the British Broadcasting Corporation (“the BBC”). The very general obligations under Article 1 are implemented by, and in the exercise of the powers conferred by, the Broadcasting Act 1996 (c. 55), and the requirements of Article 2 in relation to those other broadcasters are implemented by section 142 of that Act.

The Secretary of State for Trade and Industry is to grant a Class Licence under section 7 of the Telecommunications Act 1984 (c. 12) which is to come into force on the same date as these Regulations. This Licence will authorise the running of certain conditional access systems which are, or which are deemed (by paragraph 1 of Schedule 1 to these Regulations) to be, telecommunication systems within the meaning of section 4 of that Act. The conditional access systems which are covered by this Licence are those which are used to provide Technical Services as defined in the Licence to persons other than the Licensee. This Licence imposes certain other requirements in relation to the running of such systems, in support of those contained in these Regulations. A copy of this Class Licence is available from the Office of Telecommunications (OFTEL), 50 Ludgate Hill, London EC4M 7JJ.

Part 1 of the Regulations comprises introductory provisions. Part II implements the provisions of the Directive other than those concerning conditional access. These provisions are largely concerned with standards for television transmission systems, networks and television sets in relation to advanced television services, and are as follows—

(13) 1971 c. 61.

- (a) regulation 4 implements the final paragraph of Article 2, and requires that fully digital transmission networks open to the public be capable of transmitting wide-format services;
- (b) regulation 5 implements the remainder of Article 2, concerning standards for transmission systems, in relation to the BBC;
- (c) regulation 6 implements Article 3, which requires certain television sets to have an open interface socket permitting connection of peripherals; such socket must comply with the relevant European standard; and
- (d) regulation 7 implements Article 5, which requires that wide-screen 16:9 television services redistributed on cable systems shall be redistributed in at least the 16:9 format.

Part III of the Regulations implements Article 4 of the Directive, which concerns conditional access. Regulation 8 is introductory. The substantive implementing provisions are as follows—

- (a) regulation 9 implements Article 4(a); it requires that descramblers are capable of descrambling in accordance with the common European scrambling algorithm and of displaying signals transmitted in clear;
- (b) regulation 10 implements Article 4(b); it requires that conditional access system operators ensure that the system allows for cost effective transcontrol; regulation 10 also provides for a duty for the conditional access service provider to co-operate with cable operators to ensure that the first mentioned duty is performed effectively;
- (c) regulation 11 implements Article 4(c) concerning the requirement on a conditional access service provider who produces and markets technical services to other broadcasters to offer these services to all broadcasters on a fair, reasonable and non-discriminatory basis; the service provider is also subject to the duty to co-operate with the relevant broadcasters to ensure that the first mentioned duty is performed effectively;
- (d) regulation 12 implements the final paragraph of Article 4(c) which requires broadcasters to publish tariffs;
- (e) regulation 13 re-implements Article 4(d) concerning licences to manufacturers of consumer equipment; this regulation replaces the [Advanced Television Services \(Industrial Property Rights\) Regulations 1996 \(S.I. No. 2185\)](#), which are revoked by regulation 2 of these Regulations;
- (f) regulation 14 implements the final paragraph of Article 4(d) requiring that television sets containing an integrated decoder allow for the option of fitting at least one standardised socket permitting connection of conditional access and other elements of a digital television system to the digital decoder; such socket must comply with the relevant European standard if such a standard has been adopted, but at the date of making these Regulations, no standard has been adopted; and
- (g) regulation 15 provides for a conciliation procedure in relation to the duties under regulations 9 to 13, in implementation of Article 4(e).

Part IV concerns enforcement. Regulation 16 introduces Schedule 2, which provides for enforcement powers in relation to regulations 6, 9 and 14 on television set sockets, descramblers and integrated decoders respectively. Regulation 17 permits certain other requirements to be enforced by the Director General of Telecommunications.